(22,576)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 249.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. HALL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

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1 No. 16213.

HALL
vs.
CHICAGO, B. & Q. R. Co.

Pleas Before the Supreme Court of the State of Nebraska, at a Term Thereof Begun and Holden at the Capitol, in the City of Lincoln, in said State, on the 3rd Day of January, 1911.

Present:

Hon. Manoah B. Reese, Chief Justice.
Hon. John B. Barnes, Judge.
Hon. Charles B. Letton, Judge.
Hon. Jacob Fawcett, Judge.
Hon. William B. Rose, Judge.
Hon. Jesse L. Root, Judge.
Hon. Samuel H. Sedgwick, Judge.

Attest:

H. C. LINDSAY, *Clerk.*

Be it remembered, That on the 27th day of May, 1909, there was filed in the office of the clerk of said supreme court a certain Transcript, in the words and figures following, to-wit:

2 Pleas Before the Honorable Alexander C. Troup, One of the Judges and the Presiding Judge of the District Court of the Fourth Judicial District of the State of Nebraska, at a Term Thereof Begun and Held at the City of Omaha on the 5th Day of October, A. D. 1908.

Be it remembered, That heretofore, towit, On the 28th day of May, A. D. 1908, William H. Hall by J. O. Detweiler, his attorney, filed in the office of the Clerk of the District Court, in and for the County of Douglas, and State of Nebraska, his Petition against the Chicago, Burlington & Quincy Railroad Company, a corporation, Chicago, Burlington & Quincy Railway Company, a corporation, and Bartlett N. Torrey, which said Petition reads and is in the words and figures following, towit:

Petition.

In the District Court of Douglas County, Nebraska.

Doc. 101. No. 238.

WILLIAM H. HALL, Appellee,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation; Chicago, Burlington & Quincy Railway Company, a Corporation, and Bartlett N. Torrey, Appellants.

Petition.

Now comes the above named plaintiff and for cause of action against the defendants alleges:

1. That the said defendants Chicago, Burlington & Quincy Railroad Company and Chicago, Burlington & Quincy Railway Company are each of them corporations duly organized according to law and having one of their principal places of business in the city of Omaha, county of Douglas and State of Nebraska.

3 2. That plaintiff is a married man and a resident of the State of Nebraska; that he has resided in said state for more than six years last past; that the same has been his home and that during all of said time he has been the head of a family living in said state.

3. That during the months of June and July 1907 this plaintiff was employed by the said defendants, Chicago, Burlington & Quincy Railroad Company and Chicago, Burlington & Quincy Railway Company, in the capacity of switchman in their yards operated by them in the City of Omaha, Douglas County, Nebraska, that the contract of his employment was made in the state of Nebraska; that the services therein to be performed were to be rendered wholly within the said state and the moneys due and owing therefor were payable in said state to this plaintiff; that during the time aforementioned plaintiff performed service for the said defendants in such capacity to the amount of One Hundred and Eighty-seven Dollars ($187.00) no part of which has been paid to him and all of which is due and owing from said defendants Chicago, Burlington & Quincy Railroad Company and Chicago, Burlington & Quincy Railway Company as wages and demand of payment therefor was made upon said defendants on or about the first day of August 1907 and the same has at all times been refused.

4. That the said defendant Bartlett N. Torrey is a resident of the city of Omaha in said state and that on or about the 27th day of July 1907 caused the moneys so due and owing to said plaintiff as aforesaid, to be attached and garnished at the city of Creston, Union County, Iowa and the said defendants first above mentioned were duly served with garnishment process in said actions but plaintiff specifically alleges that no money thereon has been paid by said

defendants first above named to the said defendant Bartlett N. Torrey on said garnishment.

4 5. Plaintiff further alleges that on or about the 7th day of August 1907 in the United States District Court in and for the State of Nebraska in the city of Omaha, he was duly adjudicated a bankrupt and due notice of his adjudication was given to the said defendants and that on or about the 18th day of March 1908 in the bankruptcy proceedings in said court, the moneys herein sued for, due and owing this plaintiff for wages as aforesaid, was specifically adjudicated and determined by said bankruptcy court to be exempt to this plaintiff and was, by order of the referee therein, set off to this plaintiff as part of his exemptions; that on or about the 1st day of April 1908 this plaintiff was granted a discharge in said bankruptcy proceedings, freeing and releasing him from the obligation of payment of all claims, listed and scheduled in said proceedings; that among such claims were the claims of the said defendant Bartlett N. Torrey and also one of James R. Locke and J. H. Rawles.

6. That said wages so due have never been paid to the plaintiff and there is due and owing from the said defendants and from each of them to plaintiff the sum of $187.00 and interest thereon from the 1st day of August 1907 at 7 per cent per annum.

Wherefore plaintiff prays judgment from said defendants for the said sum of $187.00 with interest and costs of suit.

WILLIAM H. HALL,
By J. O. DETWEILER, *His Att'y.*

STATE OF NEBRASKA,
County of Douglas, ss:-

William H. Hall, being first duly sworn according to law, deposes and says that he has read the foregoing petition, knows the contents thereof and believes the same to be true.

5 Subscribed in my presence and sworn to before me this — day of ——, A. D. 1908.

——— ———,
Notary Public.

Endorsement: Doc. 101. No. 238. District Court. Petition. William H. Hall, Appellee, vs. Chicago, Burlington & Quincy Railroad Company, a corporation; Chicago, Burlington & Quincy Railway Company, a corporation, and Bartlett N. Torrey, Appellants. J. O. Detweiler, Att'y for Appellee. District Court, Douglas County, Nebraska. Filed May 28, 1908. Robert Smith, Clerk.

Afterward, on the 30th day of June, 1908, Answer was filed herein, which said Answer is in the words and figures following, to-wit:

Answer.

In the District Court of Douglas County, Nebraska.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation, et al., Defendants.

Answer.

The Chicago, Burlington & Quincy Railroad Company, answering for itself alone alleges:

1. Admits that it is a corporation engaged in operating a railroad through the states of Iowa and Nebraska.

2. As to the allegations that the plaintiff was at the times therein referred to a married man and the head of a family, and a resident of the state of Nebraska, and as to his discharge in bankruptcy, this defendant has neither knowledge nor information sufficient to form a belief, and therefore denies the same.

6 3. Defendant denies each and every other allegation contained in the said petition other than those hereinabove specifically referred to.

4. Defendant admits that but for the defenses hereinafter set forth it would now be indebted to the plaintiff in the sum of $178.60.

5. For further answer the defendant alleges that on the 27th day of July 1907 one James M. Locke recovered a judgment against the said William H. Hall in the Justice Court of Union County, Iowa before N. Skinner, Justice of the Peace, for the sum of $48.65 with six per cent interest per annum from said date, together with a further sum of $7.55 costs; that the said Justice Court was a court of competent jurisdiction of the subject matter of said action and had personal jurisdiction of the said William H. Hall; that in the said action above referred to a writ of attachment was issued at the suit of the plaintiff therein and the defendant, Chicago, Burlington & Quincy Railroad Company was attached as garnishee as the debtor of the said William H. Hall, and on the 27th day of July, 1907 judgment was rendered against this defendant in favor of James M. Locke by the said Justice Court of Union county, Iowa, for the sum of $56.20, with six per cent interest per annum from said date until paid; that said court was a court of competent jurisdiction and had personal jurisdiction of the said William H. Hall and of this defendant; that on the 31st day of July 1907 this defendant paid to said court the sum of $56.20 in satisfaction and discharge of the said judgment.

6. That on the 25th day of April, 1894 one B. N. Torrey recovered judgment against said William H. Hall, in Justice Court of Union County, Iowa, before J. B. Kirsch, a Justice of the Peace, for

the sum of $22.40 debt, with six per cent interest thereon
7 per annum from said date, together with the sum of $3.80 costs; that said Justice Court was a court of competent jurisdiction of the subject matter of said action and had personal jurisdiction of said William H. Hall; that on the 8th day of July, 1907 a transcript of the said judgment was duly filed in the office of the Clerk of the District Court of Union County, Iowa, as provided by the laws of said state, and on the 26th day of July 1907 an execution was duly issued by the Clerk of the District Court of said County on said judgment directed to the Sheriff of Union County, Iowa, and said execution was duly served by the garnishment of the defendant, Chicago, Burlington & Quincy Railroad Company as the debtor of the said William H. Hall; that due notice of the said garnishment proceedings, as required by the laws of the state of Iowa, was served on the said William H. Hall; that the said court was a court of general original jurisdiction and had jurisdiction of the subject matter of the said action and of the said garnishment, and of the said William H. Hall; that on the 27th day of August 1907 the District Court of Union County, Iowa, in said cause rendered a personal judgment against the Chicago, Burlington & Quincy Railroad Company for the sum of $39.26, debt, with six per cent interest thereon from said date, and for the sum of $17.65 costs, and that said judgment is a valid and subsisting obligation and claim against this defendant at this time.

7. That on the 29th day of July 1907 one J. A. Rawls recovered judgment against the said William H. Hall in the Justice Court of Union County, Iowa, before N. Skinner, a Justice of the Peace, for the sum of $52.50 debt, with six per cent interest per annum from said date, together with the sum of $2.21 costs; that said court was a court of competent jurisdiction of the subject matter of said action and had personal jurisdiction of said William H. Hall; that on the 29th day of July 1907 an execution was issued by said court on said judgment and this defendant, Chicago, Burlington & Quincy
8 Railroad Company, was duly garnished as the debtor of said William H. Hall and on the 10th day of August 1907 the said Justice Court rendered judgment in favor of the said J. A. Rawls and against the Chicago, Burlington & Quincy Railroad Company in said proceedings for the sum of $61.60, or so much thereof as should remain in the said garnishee's hands after payment of the judgment rendered in the garnishment proceedings hereinabove referred to in favor of the said B. N. Torrey; that said court was a court of competent jurisdiction of the subject matter of said garnishment proceedings and had personal jurisdiction of the Chicago, Burlington & Quincy Railroad Company, and the said William H. Hall was given due notice of said proceedings as required by the laws of the State of Iowa; that said judgment is a valid and subsisting obligation and claim against this defendant at this time.

Wherefore, defendant prays that it have judgment for its costs.

JAMES E. KELBY,
ARTHUR R. WELLS,
Attorneys for said Defendant.

STATE OF NEBRASKA,
County of Douglas, ss:

Arthur R. Wells, being first duly sworn, on his oath says that he is one of the attorneys for the above named defendant, which is a corporation; that he has read the foregoing answer, knows the contents thereof, and that the averments therein contained are true as he verily believes.

ARTHUR R. WELLS.

Subscribed in my presence and sworn to before me this 30 day of June, 1908.

S. N. MEALIO,
Notary Public.

9 Endorsement: 101-238. In District Court, Douglas County, Nebraska. William H. Hall, Appellee, vs. Chicago, Burlington & Quincy Railroad Company, Appellant. Answer of Chicago, Burlington & Quincy Railroad Company. James E. Kelby, Arthur R. Wells, Att'y- for Appellant, C., B. & Q. R. R. Co. District Court, Douglas County, Nebraska. Filed Jun- 30, 1908. Robert Smith, Clerk.

Afterward, on the 25th day of November, 1908, a Reply was filed herein, which said Reply is in the words and figures following, towit:

Reply.

In the District Court of Douglas County, Nebraska.

Doc. 101. #238.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al., Appellants.

Reply.

Now comes the above named appellee and for reply to answer of the appellants herein filed, admits the allegations in the 1st, 2nd, 3rd, and 4th paragraphs therein contained, and specifically denies each and every other allegation therein contained.

Further replying appellee alleges that on August 6, 1907 he filed his voluntary petition in bankruptcy, in the United States District Court in and for the District of Nebraska, and on the 7th day of August 1907 he was duly adjudicated a bankrupt under the laws of the United States so made and provided, that in said petition there was duly listed and scheduled each and every one of the debts, judgments and claims owing by appellee unto the said James M. Locke, B. N. Torrey and J. A. Rawles set forth in said

appellant's answer, with statement of said attempts of garnishment proceedings and praying that appellee might be discharged
10 from each and all of them by said Court; That on August 7, 1908 appellee was duly adjudicated a bankrupt by said Court, due notice of which proceedings were immediately given said appellants by publication and otherwise as required by law and also given to each of said creditors J. A. Rawles, B. N. Torrey, and James M. Locke who were each duly notified to appear in said bankruptcy proceeding and prove their claims therein and have the same duly allowed as required by Law. That for more than six months prior to said adjudication in bankruptcy, this appellee was insolvent and unable to pay said creditors all of which said creditors well knew. That a true copy of said bankruptcy adjudication was furnished to said appellant and it was requested to set the same up and protect the rights of this appellee in the court proceedings if any brought against it to secure appellee's wages. That such a copy is hereto attached, marked exhibit "A", and made part hereof. That on March 18, 1908 on prayer of this appellee the moneys herein owed by appellant to appellee were ordered set apart in said bankruptcy proceedings as exempt to appellee by the Hon. J. A. C. Kennedy referee therein, a true copy of which order is hereto attached marked exhibit "B" and made part hereof. That on April 4, 1908 this appellee was duly discharged from said debts, claims, and judgments of said James M. Locke, J. A. Rawles and B. N. Torrey, as set forth in the true copy of said discharge hereto attached, marked "exhibit C" and made part hereof. That all of said claims were operative under said discharge and none of said debts are excepted from its said operation by any law of said bankrupt court. That all of said orders of said court herein shown by said exhibits A B C are all in full force and binding, never having been vacated or reversed. That by reason of said bankruptcy proceedings and orders all proceedings set forth in paragraphs 5, 6 and 7 *if* such proceedings were
11 had were entirely and completely nullified, vacated, and discharged and the same constitute no defense whatever to claim of this appellee to the recovery of the said monies herein sued for.

Wherefore appellee prays judgment as aforesaid in his petition herein filed together with interest and costs.

WM. H. HALL,
By J. O. DETWEILER, *His Att'y.*

EXHIBIT A.

Adjudication of Bankrupt.

In the United States District Court for the District of Nebraska, Omaha Division.

Case No. 1357. In Bankruptcy.

In the Matter of WILLIAM H. HALL, Bankrupt.

Voluntary Petition.

At Omaha, in said district, on the 7th day of August A. D. 1907, before the Honorable William H. Munger, Judge of said court of bankruptcy, the petition of William H. Hall that he be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said William H. Hall, is hereby declared and adjudged bankrupt accordingly.

WM. H. MUNGER,
Judge of said Court.

Endorsed: Filed at 3:15 P. M. Aug. 7, 1907. R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA,
District of Nebraska, Omaha Division, set:

I, R. C. Hoyt, Clerk of the United States District Court
12 for the District of Nebraska, do hereby certify that the foregoing is a true and correct copy of the original thereof, which original is now in my custody as such Clerk.

Witness my hand as Clerk, and the seal of said Court, at Omaha, Nebraska, this 28th day of August, 1907.

[SEAL.]

R. C. HOYT, *Clerk,*
By F. A. MOORE, *Deputy.*

EXHIBIT B.

Ex. 1.

In the District Court of the United States for the District of Nebraska,

Case No. 1357. In Bankruptcy.

In the Matter of WILLIAM H. HALL, Bankrupt.

Voluntary Petition.

Order Setting Aside Exemptions.

At 608 Brandeis Building, in the City of Omaha, Douglas County, Nebraska, in said District, Before J. A. C. Kennedy, Referee in Bankruptcy, March 18, 1908.

The Schedules filed by the above named Bankrupt and the examination of the Bankrupt at the first meeting of creditors having disclosed no assets other than those set forth in the schedules, and the said assets so set forth being exempt to the Bankrupt as the head of a family under the laws of Nebraska;

The exemptions claimed in his schedules by the Bankrupt as the head of a family under the Nebraska state laws, are hereby allowed and the following property so claimed by the Bankrupt is hereby set aside to him as exempt, towit:

13 3 rocking chairs; 6 common chairs; 1 dining table; 1 cook stove; 1 gasoline stove; 1 heating stove; 2 bed-steads with beds complete; 1 set of common dishes; ordinary wearing apparel for Bankrupt and wife; 1 Elgin watch, 17 jewels, gold filled case; 1 Wheeler & Winson Sewing Machine; wages due Bankrupt from Chicago, Burlington & Quincy Railroad Company for services due as switchman during June and July, 1907, in the sum of $187.00.

Witness my hand this 18th day of March, 1908.

J. A. C. KENNEDY, *Referee.*

The above is a true copy of an order entered 3-18-1908 by the undersigned.

J. A. C. KENNEDY, *Referee.*

(Copy.)

EXHIBIT C.

Ex. 2.

Discharge of Bankrupt.

In the United States District Court for the District of Nebraska, Omaha Division.

Case No. 1357. In Bankruptcy.

In the Matter of WILLIAM H. HALL, Bankrupt.

Voluntary Petition.

Whereas, William H. Hall, of Omaha, in the county of Douglas and State of Nebraska, in said district, has been duly adjudged a bankrupt, under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said William H. Hall be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the 6th day of August, A. D., 1907, on which day the petition for adjudication was filed by him, excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Dated April 4, 1908.

WM. H. MUNGER,
Judge of said Court.

14 Endorsed: Filed at 10:00 A. M. Apr. 4, 1908. R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA,
District of Nebraska, Omaha Division, set:

I, R. C. Hoyt, Clerk of the United States District Court for the District of Nebraska, do hereby certify that the foregoing is a true and correct copy of the original thereof, which original is now in my custody as such Clerk.

Witness my hand as Clerk, and the Seal of said Court, at Omaha, Nebraska, this 21st day of April, 1908.

[SEAL.]

R. C. HOYT, *Clerk*,
By —— ——, *Deputy*.

Endorsement: No. 1357. United States District Court, District of Nebraska, Omaha Division. In the Matter of William H. Hall, Bankrupt. (Copy.) Discharge of Bankrupt. 55c. paid R. C. Hoyt Clerk.

Endorsement: Doc. 101. No. 238. District Court of Douglas

County, Nebraska. William H. Hall, Appellee, vs. Chicago, Burlington & Quincy Railroad Company et al., Appellants. J. O. Detweiler, Att'y for Appellee. District Court, Douglas County, Nebraska. Filed Nov. 25, 1908. Robert Smith, Clerk.

Afterward, at the October Term of Court, and on the 28th day of November, 1908, Trial to Court was had herein, as appears on page 412, Journal 111, and is in the words and figures following, towit:

15 *Trial to Court.*

101, 238.

WILLIAM H. HALL, Appellee, Plaintiff,
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al., Defendants.

Order.

Come now the Defendants in open court and offer to confess judgment for four dollars ($4.00), and costs to date.

Come now the parties hereto and in open court waive trial by jury and the cause proceeds to trial to the court, upon a stipulation as to the facts, which stipulation and facts are dictated to the court reporter and by the parties agreed to, and the court having heard the arguments of counsel and the cause having been submitted, the court takes said cause under advisement.

Afterward, at the October Term of Court, and on the 7th day of December, 1908, Judgment was entered herein, as appears on page 419, Journal 111, and is in the words and figures following, towit:

Judgment.

101, 238.

WILLIAM H. HALL, Appellee, Plaintiff,
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, a Corporation; Chicago, Burlington & Quincy Railway Company, a Corporation, and Bartlett N. Torrey, Appellants, Defendants.

Judgment.

16 This cause having been submitted to the court at a former day of this term, towit, November 28, 1908, and by the court taken under advisement, the court, now being fully advised in the premises, finds generally for the plaintiff on the cause of action set out in the petition and against the Chicago, Burlington & Quincy Railroad Company, and that there is due and owing the

plaintiff from the defendant the sum of $132.50 with interest according to law.

It is therefore considered, ordered and adjudged that the plaintiff, William H. Hall, recover of and from the defendant, Chicago, Burlington & Quincy Railroad Company the sum of one hundred thirty-two and 30/100 dollars ($132.30) with interest thereon at the rate of 7% per annum from the 5th day of October, 1908, and the costs of this action, taxed at $24.00. To which the defendant, Chicago, Burlington & Quincy Railroad Company duly excepts.

Afterward, on the 10th day of December, 1908, Motion for New Trial was filed herein, which said Motion is in the words and figures following, towit:

Motion for New Trial.

In the District Court of Douglas County, Nebraska.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Appellant.

Motion for New Trial.

The Appellant, Chicago, Burlington and Quincy Railroad Company, moves the court to set aside and vacate the finding and decision of the Court in favor of the said William H. Hall against Chicago, Burlington and Quincy Railroad Company and to
17 grant a new trial for the following causes affecting materially the substantial rights of the said Appellant:

1. That the finding and decision of the Court is not sustained by sufficient evidence.
2. That the finding and decision of the Court is contrary to law.
3. Error of law occur-ing at the trial, and excepted to by the Appellant at the time.
4. The Court erred in overruling Appellant's motion for a finding and decision in its favor.
5. The Court erred in finding for the Appellee for an amount in excess of $3.89.
6. The finding and decision of the court fails and refuses to give full faith and credit to the several judgments of the Courts of the State of Iowa which are set out in the Appellant's answer and shown by the record, contrary to and in violation of the Constitution of the United States.
7. The Court erred in holding and deciding that the bankruptcy proceedings instituted by said William H. Hall in the United States District Court for the District of Nebraska, Omaha Division, and the discharge in bankruptcy of the said Hall thereunder, had the effect of cancelling and annulling the rights of the plaintiffs in the several garnishment proceedings in the Courts of Iowa which are set out in the Appellant's answer and shown by the record, and in holding that said bankruptcy proceedings discharged and an-

nulled and cancelled the judgments rendered in said garnishment proceedings against this Appellant in the Courts of Iowa.

The Appellant, Chicago, Burlington & Quincy Railroad Company requests that, in case this motion is overruled, it be granted
40 days from the adjournment sine die of this term of this
18 Court in which to prepare, settle and file its bill of exceptions.

ARTHUR R. WELLS,
Attorney for Appellant.

Endorsement: 101-238. District Court, Douglas Co. Neb. William H. Hall vs. Chicago, Burlington and Quincy Railroad Company. Motion for New Trial. District Court, Douglas County, Nebraska. Filed Dec. 10, 1908. Robert Smith, Clerk.

Afterward, at the October Term of Court, and on the 12th day of December, 1908, Order Overruling Motion for New Trial, was entered herein, as appears on page 425, Journal 111, and is in the words and figures following towit:

Order Overruling Motion for New Trial.

101, 238.

WILLIAM H. HALL, Plaintiff,
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY et al.,
Defendants.

Order.

This cause coming on for hearing upon the motion of the defendants for a new trial, the court being fully advised in the premises finds that said motion should be overruled. It is therefore ordered that said motion for a new trial be and is hereby overruled. To which order the defendants duly except and are allowed forty days from the rising of the court to prepare and serve their bill of exceptions.

Afterward, at the October Term of Court and on the 6th day of February, A. D., 1909 an Order adjourning the October
19 Term of Court was entered herein as appears on page 542, Journal 114, and is in the words and figures as follows, towit:

Order Adjourning October, 1908, Term of Court.

In the Matter of the October, A. D. 1908, Term of the District Court of the Fourth Judicial District of Nebraska, in and for Douglas County, and the Adjournment Thereof.

This separate session of the District Court of the Fourth Judicial District of Nebraska, in and for the county of Douglas, for the

October A. D., 1908 term was begun on Monday the 5th day of October, A. D., 1908.

It is therefore by the Court ordered that all matters pending, all causes of action not disposed of, all motions and proceedings submitted to the court but not determined be, and the same hereby are, continued until the next ensuing term of this court.

And now on this 6th day of February, A. D., 1909, it is by the court and all the judges thereof, ordered that the October, A. D., 1908 term of this court be, and it hereby is, adjourned sine die.

Witness the signatures of the Honorable Judges of this 6th day of February, A. D. 1909.

By the Court:

W. G. SEARS.
A. C. TROUP.
A. L. SUTTON.
WILLIAM A. REDICK.
LEE S. ESTELLE.
HOWARD KENNEDY.
GEO. A. DAY.

20 STATE OF NEBRASKA,
Douglas County, ss:

I, Robert Smith, Clerk of the District Court, in and for Douglas County, Nebraska, do hereby certify that the foregoing is a full and true Transcript of the proceedings and record had in the District Court, containing the Petition, Answer, Reply, Trial to Court, Judgment, Motion for New Trial, and order Overruling Motion for New Trial, and Order adjourning the October A. D., 1908 Term of Court, in the case of William H. Hall, Appellee, against Chicago, Burlington & Quincy Railroad Company, a corporation, Chicago, Burlington & Quincy Railway Company, a corporation, and Bartlett N. Torrey, Appellants, appearing of record in said court.

I do further certify that the bill of exceptions hereto attached and made a part of this Transcript was attached by me and is the original bill of exceptions filed in the office of the Clerk of said Court, in the above entitled action.

Witness my signature and the seal of said Court, at the City of Omaha, this 25th day of March, A. D., 1909.

[SEAL.] ROBERT SMITH, *Clerk*,
By ALLEN T. GOW, *Deputy*.

Endorsed: 16213. Hall v. C., B. & Q. R. Co. Transcript. Supreme Court of Nebraska. Filed May 27, 1909. H. C. Lindsay, Clerk.

21 And on the same day there was filed in the office of the clerk of said supreme court a certain Bill of Exceptions, in the words and figures following, to-wit:

In the District Court within and for Douglas County, Nebraska.

Doc. 101. No. 238.

WILLIAM H. HALL, Plaintiff,
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Defendant.

Bill of Exceptions.

Be It Remembered, that in the District Court within and for the County of Douglas and State of Nebraska, at the regular October term, 1908, thereof to wit, on the 25th day of November, 1908, before the Honorable A. C. Troup, one of the judges of said court; J. O. Detweiler appearing for the plaintiff, and, Arthur R. Wells appearing for the defendant, and a jury having been waived the following proceedings were had, viz:

Endorsed: District Court Douglas County, Nebraska. Filed Mar. 15 1909. Robert Smith Clerk.

Mr. DETWEILER: It is hereby agreed between the appellant and appellee herein, that this cause shall be tried to the court, waiving a jury, and that it shall be considered and determined by the court upon the following stipulated facts:

First. That the said defendant Chicago, Burlington & Quincy Railroad Company is a corporation organized according to law and having one of its principal places of business in the City of Omaha, County of Douglas and State of Nebraska, and maintains and operates switch-yards in said City of Omaha.

22 Second. That the appellee herein, William H. Hall, is a married man and a resident of the State of Nebraska. That he has resided in said state for more than six years last past; that the same has been his home during all of said time; and he has during all of said time been the head of a family and living in said state.

Third. That during the months of June and July, 1907, the said William H. Hall was employed by the said defendant, Chicago, Burlington & Quincy Railroad Company, in the capacity of switchman, in their yards, operated by it in said City of Omaha, Douglas County, Nebraska. That the contract of his employment was made in the State of Nebraska; that the services therein to be performed were to be rendered wholly within said state and the moneys to become due and owing therefor were payable in said state to the said William H. Hall. That during the time before mentioned, to wit, June and July of 1907, the said William H. Hall performed services for the said defendant in such capacity as switchman to the amount of $178.60, no part of which has been paid to said Hall by said defendant, and all of which was earned by him as wages. A demand of payment was made upon it by the said William H. Hall on or

about the first day of August, 1907, and the same has at all times been refused by said appellant.

Fourth. That the said William H. Hall during the said months of June and July, 1907, and for more than six months prior thereto was insolvent, and what wages were earned by him were exempt to him for the support of himself and his family under the laws of the state of Nebraska of which said William H. Hall was a resident.

Fifth. It is further stipulated and agreed that on the 6th day of August, 1907, the said William H. Hall filed his voluntary petition in bankruptcy in the United States District Court in and for the District of Nebraska, at Omaha Nebraska and on the 7th day of August, 1907, he was duly adjudicated a bankrupt under the
23 laws of the United States so made and provided governing cases in bankruptcy; that in said petition so filed in said bankruptcy court, there was duly listed a schedule of the following specific debts and claims, to wit:

First. The claim of one James M. Locke, of Creston, Union County, Iowa, for the sum of $48.65 and $7.55 costs also, due and owing for services alleged to be rendered by said James M. Locke to the said William H. Hall, bankrupt, in said petition described. Also the specific claim of one Bartlett N. Torrey of Creston, Union County, and State of Iowa, for the specific sum of $22.40, together with interest thereon, from April 25th, 1894, at the rate of six per cent, for services rendered as physician by said Bartlett N. Torrey to said William H. Hall, bankrupt, in said petition described.

Also the following specific debt and claim in favor of one J. A. Rawles, of the City of Creston, Union County, State of Iowa, in the sum of $52.50, for services said to have been rendered by said J. A. Rawles as physician for the said William H. Hall, bankrupt, in said petition described.

There was also in each of said claims so listed, a further statement that garnishment proceedings were had therein in the courts of Union County, State of Iowa, to recover the amounts therein alleged to be owing, and that the appellant, Chicago, Burlington & Quincy Railroad Company herein was garnished in said action.

That in said bankruptcy petition the said William H. Hall prays that he may be discharged from each and all of said claims by the said bankruptcy court.

That on August 7th, 1907, said William H. Hall was duly adjudicated a bankrupt by said court and due notice of said adjudication and the pendency of said bankruptcy proceedings were immediately given to said appellant, and to each and all of said claimants herein before mentioned, by publication and otherwise, as required
24 by law, and notice was also given to each of said creditors, the said J. A. Rawles, Bartlett N. Torrey and James M. Locke, who were each duly notified to appear in said bankruptcy court and prove their claims therein against said bankrupt, and have the same duly allowed as required by law.

That for more than six months prior to said adjudication in bankruptcy the said William H. Hall was insolvent and unable to pay said creditors all of which said creditors then each well knew. That

a true copy of said adjudication in bankruptcy is in words and figures as follows:

In the United States District Court for the District of Nebraska, Omaha Division.

In the Matter of WILLIAM H. HALL, Bankrupt.

Case No. 1357. In Bankruptcy.

Voluntary Petition.

At Omaha, in said district, on the 7th day of August, A. D. 1907, before the Hon. William H. Munger, Judge of said Court of Bankruptcy the petition of William H. Hall that he be adjudged a bankrupt within the true intent and meaning of the Act of Congress relating to bankruptcy, having been heard and duly considered the said William H. Hall is hereby declared and adjudged a bankrupt accordingly.

WILLIAM H. MUNGER,
Judge of said Court.

Endorsed: Filed at 3:15 P. M. August 7th, 1907. R. C. Hoyt, Clerk.

That a true copy of said bankruptcy adjudication was furnished to said appellant herein and it was requested to at once set the same up to protect the rights of this appellee in court proceedings if any brought against it to secure appellee's wages. That on March 18th, 1908, in the regular course of the proceedings in said bankruptcy case on prayer of this appellee the moneys herein sued for and sought to be recovered from said appellant, Chicago, Burlington & Quincy Railroad Company, were ordered by the referee in said bankruptcy cause set apart in said bankruptcy proceeding as exempt to appellee, the said William H. Hall, by the Hon. J. A. C. Kennedy, referee therein, that said order is in words and figures as follows: Which is here marked Exhibit 1 and made a part of this stipulation as follows:

EXHIBIT 1.

In the District Court of the United States for the District of Nebraska.

Case No. 1357. In Bankruptcy.

In the Matter of WILLIAM H. HALL, Bankrupt.

Voluntary Petition.

Order Setting Aside Exemptions.

At 608 Brandeis Building, in the City of Omaha, Douglas Count-, Nebraska, in Said District, Before J. A. C. Kennedy, Referee in Bankruptcy, March 18th, 1908.

The schedules filed by the above named Bankrupt and the examination of the Bankrupt, at the first meeting of creditors having disclosed no assets other than those set forth in the schedules, and the said assets so set forth being exempt to the Bankrupt as the head of a family under the laws of Nebraska:—

The exemptions claimed in his schedules by the Bankrupt as the head of a family under the Nebraska state laws, are hereby allowed and the following property so claimed by the Bankrupt is hereby set aside to him as exempt to wit:—

3 rocking chairs, 1 dinning table, 1 cook stove, 1 gasoline stove, 1 heating stove, 2 bed steads with beds complete; 1 set of common dishes, ordinary wearing apparel, for Bankrupt and wife; 1 Elgin watch, 17 jewels, gold filled case; 1 Wheeler & Wilson Sewing machine.

26 Wages due Bankrupt from Chicago, Burlington and Quincy Railroad Company for services due as switchman during June and July 1907 in the sum of $187.00.

Witness my hand this 18th day of March, 1908.

J. A. C. KENNEDY, *Referee.*

Sixth. That on April 4th, 1908, on prayer of this appellee William H. Hall, in said bankruptcy proceedings, the said bankrupt, William H. Hall, personally, was duly discharged from all said debts, claims and judgments, particularly including said James N. Locke, J. A. Rawles and B. N. Torrey, above set forth, a true copy of which order of discharge is marked Exhibit 2 herein, and is made a part of this stipulation of facts in words and figures as follows:

(Here insert Exhibit 2.)

EXHIBIT 2.

In the United States District Court for the District of Nebraska, Omaha Division.

Case No. 1357. In Bankruptcy.

In the Matter of WILLIAM H. HALL, Bankrupt.

Voluntary Petition.

Whereas William H. Hall of Omaha, in the County of Douglas and State of Nebraska in said district has been duly adjudged a bankrupt, under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said William H. Hall be discharged from all debts and claims which are made provable by said act against his estate, and which existed on the 6th day of August A. D. 1907 on which day the petition for adjudication was filed by him excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

27

WM. H. MUNGER,
Judge of said Court.

Dated April 4, 1908.

Endorsed: Filed at 10:00 A. M. April 4, 1908. R. C. Hoyt, Clerk.

Seventh. It is further stipulated and agreed by the parties hereto that the said adjudication in bankruptcy and the said order of the referee, setting aside the said exemption referred to, as exhibit 1, and the said discharge above referred to as exhibit 2, are all orders of the court now in full force and effect, valid, existing and binding to the full extent and purpose of the law for which said orders are made and provided.

Eighth. It is further stipulated and agreed that for all purposes of this case the published statutes of the State of Iowa and the decisions of the supreme court as reported in the official Iowa reports, or in the Northwestern Reporter, may be considered in evidence and reference made to the same with the same effect as if they had been offered in evidence and copied herein.

Ninth. It is further stipulated that the appellee Hall had formerly been a resident of the City of Creston, in Union County, Iowa, at the time his indebtedness to the said Locke, Torrey and Rawles accrued.

Tenth. That on the 20th day of July, 1907, one James M. Locke filed in the office of N. Skinner, Justice of the Peace, in and for Creston township, Union County, Iowa, a petition in an action against said appellee, William H. Hall; that in said action a writ of attachment was issued on the same date and served on the 20th day of July, 1907, by garnishing the appellant, Chicago, Burlington & Quincy Railroad Company as a debtor of said Hall. That on the 20th day

of July, 1907, the original notice of the pendency of said
28 action and of the garnishment of said railroad company was served upon the said Hall by R. Campbell, a constable of said court, in Union County, Iowa, and on the 27th day of July, 1907, a judgment was rendered in said action in favor of said James M. Locke and against the said Chicago, Burlington & Quincy Railroad Company as garnishee, in the sum of $56.20, and said gar-
29 nishee was ordered to pay said amount into court out of funds in its hands belonging to said William H. Hall.

That attached to this stipulation and marked exhibit 3, is a true and correct copy and transcript of all of the pleadings, processes and judgments rendered in said action duly certified according to law.

Eleventh. That on the 25th day of April, 1904, said Bartlett N. Torrey recovered a judgment against said William H. Hall in justice court of Union County, Iowa, a true and correct transcript of which is hereby attached, marked exhibit 4.

That thereafter and on the 26th day of July, 1907, a transcript of said judgment having been filed in the office of the clerk of the district court of said county, an execution was issued on said judgment by the clerk of said district court on the same date and said Chicago, Burlington & Quincy Railroad Company was garnisheed as the debtor of said William H. Hall, and on the 27th day of August, 1907, the district court of Union county, Iowa rendered a judgment against the said garnishee as the debtor of the said William H. Hall. And on the 27th day of August, 1907, the district court of Union County, Iowa, re-dered a judgment against the said garnishee, Chicago, Burlington & Quincy Railroad Company and in favor of the said Bartlett N. Torrey for the sum of $39.26 debt, with $17.65 costs. That a true and correct transcript of the process and proceedings had in said action duly certified, are hereto attached, marked exhibit 5.

Twelfth. It is further stipulated that on the 29th day of July, 1907, said J. A. Rawles began suit against said William H. Hall, in justice court, before N. Skinner, a justice of the peace in and for Creston township, Union County, Iowa, to recover the sum of $52.50, and asking the issuance of a writ of attachment. That said writ of attachment was issued, and on the 29th day of July, 1907, the appellant, Chicago, Burlington & Quincy Railroad Company was garnished as debtor of the said William H. Hall. That on the 10th day of August, 1907, judgment was duly rendered by the said court in favor of said J. A. Rawles and against the Chicago, Burlington & Quincy Railroad Company for the sum of $61.60. A true and correct transcript of the pleadings, processes, proceedings and judgment in said action are hereto attached marked exhibit 6, and made a part of this record.

(12½.) It is further stipulated that before the appellant received notice of the bankruptcy proceedings of said Hall it had paid into the court the amount of the judgment rendered in favor of said James M. Locke, in the sum of $56.20. That the remaining funds are still in the hands of the appellant.

Thirteenth. It is further stipulated that on the 3rd day of March, 1908, plaintiff William H. Hall filed in the district court of the

United States for the District of Nebraska, a petition, and on the 7th day of March, 1908, Chicago, Burlington & Quincy Railroad Company filed in said court its answer to said petition, and on the 9th day of March, 1908, the Hon. William H. Munger, Judge of said United States Court rendered an opinion, and on the 19th day of March, 1908, a certain judgment entry was entered by said United States District Court pursuant to said opinion. A duly certified copy of said petition, answer, opinion and judgment entry being attached hereto as a part of this stipulation, marked exhibit 7.

Fourteenth. It is further stipulated that the appellee Hall, employed attorneys at Creston, Iowa, being the firm of Sullivan and Fry, reputable members of the bar of said county, to look
30 after his interests in said garnishment proceedings above referred to, but owing to the sudden death of Mr. Fry — the said firm who had the matter in charge what was done by them in the case is not known.

Fifteenth. It is further stipulated and agreed that the said Chicago, Burlington & Quincy Railroad Company was at the times of said garnishment suits engaged in operating a line of railroad through Union County, Iowa, and was subject to the jurisdiction of the courts of said county.

Sixteenth. It is further stipulated and agreed that while the parties admit that the facts herein above stated are true, each of the parties reserves the right to object to any of the aforesaid facts on the ground that they are irrelevant, and immaterial to the issues in this case, and it is agreed that said objections may be urged in argument with the same effect as if noted at the time.

17th. Pursuant to the provisions of the foregoing stipulation, defendant offered in evidence the following statutes of the State of Iowa, which the parties agree, were in force and effect at the time the proceedings in said main cases against said Hall and in the garnishment cases against the defendant were had in the Courts of the State of Iowa, to wit:

Sec. 3495. By attachment.—An action against a nonresident of the state, when aided by an attachment, may be brought in any county of the state wherein any part of the property sought to be attached may be found, or wherein any part was situated when the action was commenced, or where the defendant is personally served in this state; and, except as hereinafter provided, an action against a resident of this state must be brought in the county of his residence, or that in which the contract was to be performed, except that if an action be duly brought against such defendant in any other county by virtue of any of the provisions of this chapter, then such action may, if legal cause for an attachment exists, be aided by at-
31 tachment. Should such action be brough- against a resident of this state in any other county than that of his residence, he may have the place of trial changed to the district court of the county wherein he resides, in the same manner and upon the same terms as provided in section thirty-five hundred and four of this chapter, and the property attached shall not be released because said action was brought in the wrong county, but shall be held and subject in the

same manner as if said action had been brought in the county of defendant's residence.

SEC. 3514. Original Notice.—Action in a court of record shall be commenced by serving the defendant with a notice, signed by the plaintiff or his attorney, informing him of the name of the plaintiff, that a petition is, or on or before the date therein named will be filed in the office of the clerk of the court wherein action is brought, naming it, and stating in general terms the cause or causes thereof, and if it is for money, the amount thereof, and that unless he appears thereto and defends before noon of the second day of the term at which defendant is required to appear, naming it, his default will be entered and judgment or decree rendered against him thereon. In all cases where the time for the commencement of the term has been changed after the notice has been served, the defendant shall be held to appear at the time to which such term has been changed.

SEC. 3516. Who May Serve Notice.—The notice may be served by any person not a party to the action.

SEC. 3518. Method of Service.—The notice shall be served as follows:

1. By reading it to the defendant, or offering to do so in case he neglects or refuses to hear it read, and in either case by delivering him personally a copy thereof, or, if he refuses to receive it, offering to do so;

2. If not found within the county of his residence, by leav-
32 ing a copy thereof at his usual place of residence with some member of the family over fourteen years of age;

3. By taking an acknowledgment of the service indorsed thereon, dated and signed by the defendant.

SEC. 3519. Return of Personal Service.—If served personally, the return must state the time, manner and place of making the service and that a copy was delivered to defendant, or offered to be delivered. If made by leaving a copy with the family, it must state at whose house the same was left, and that it was the usual place of residence of the defendant, and the township, town or city in which the hous- was situated, the name of the person with whom the same was left, or a sufficient reason for omitting to do so, and that such person was over fourteen years of age and was a member of the family.

SEC. 3537. Actual Service.—Actual personal service of the notice within or without the state supersedes the necessity of publication.

Title XIX.

Of Attachments, Garnishment, Executions, and Supplementary Proceedings.

Chapter 1.

Of Attachments.

SEC. 3876. Method.—The Plaintiff in civil action may cause the property of the defendant not exempt from execution to be attached

at the commencement or during the progress of the proceeding, by pursuing the course hereinafter prescribed.

SEC. 3877. Proceedings Auxiliary.—If it be subsequent to the commencement of the action, a separate petition must be filed, and in all cases the proceedings relative to the attachment are to be deemed independent of the ordinary proceedings and only auxiliary thereto.

SEC. 3878. Grounds Not Stated in Alternative.—The peti-
33 tion which asks an attachment must in all cases be sworn to. It must state one or more of the following grounds:

1. That the defendant is a foreign corporation or acting as such:
2. That he is a nonresident of the state:
3. That he is about to remove his property out of the state without leaving sufficient remaining for the payment of his debts;
4. That he has disposed of his property, in whole or in part, with intent to defraud his creditors;
5. That the defendant is about to dispose of his property with intent to defraud his creditors;
6. That he has absconded, so that ordinary process cannot be served upon him;
7. That he is about to remove permanently out of the county, and has property therein not exempt from execution, and that he refuses to pay or secure the plaintiff;
8. That he is about to remove permanently out of the state, and refuses to pay or secure the debt due the plaintiff;
9. That he is about to remove his property or a part thereof out of the county with intent to defraud his creditors;
10. That he is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors;
11. That he has property or rights in action which he conceals;
12. That the debt is *due* for property obtained under false pretenses.

The causes for the attachment shall not be stated in the alternative.

SEC. 3897. Garnishment.—Property of the defendant in the possession of another, or debts due the defendant, may be attached by garnishment as hereinafter provided.

34 SEC. 3923. Sheriff's Return.—The sheriff shall return upon every attachment what he has done under it, which must show the property attached, the time it was attached, and the di-position made of it, by a full and particular inventory; also the appraisement above contemplated when such has been made. When garnishees are summoned, their names and the time each was summoned must be stated, with a copy of each notice of garnishment served attached as a part of his return. Where real property is attached, the sheriff shall describe it with certainty to identify it, and, where he can do so, by a reference to the book and page where the deed under which the defendant holds is recorded. He shall return with the writ all bonds taken under it, any notice of claim to such property by another than the defendant, any indemnifying bond

given by the plaintiff in consequence of such notice, and all money and bank bills levied upon or paid to him thereunder. Such return must be made immediately after he has attached sufficient property, or all that he can find; or, at latest, on the first day of the first term on which the defendant is notified to appear.

SEC. 3924. Judgment.—Satisfied from Proceeds.—If judgment is rendered for the plaintiff in any case in which an attachment has been issued, the court shall apply, in satisfaction thereof, any money seized by or paid to the sheriff under such attachment and by him delivered to the clerk, and any money arising from the sales of perishable property, and if the same is not sufficient to satisfy the plaintiff's claim, the court shall order the issuance of a special execution for the sale of any other attached property which may be under his control.

SEC. 3925. Co-rt May Control Property.—The court may from time to time make and enforce proper orders respecting the property, sales and application of the money collected.

35 Chapter 2.

Of Garnishment.

SECTION 3935. How Effected Notice.—The officer serving a writ of attachment shall garnish such persons as the plaintiff may direct as supposed debtors, or having in possession property of the principal defendant, which shall be effected by a notice served in the manner and as an original notice in civil action, forbidding his paying any debt owing such defendant, due or to become due, and requiring him to retain possession of all property of the defendant in his hands or under his control, to the end that the same may be de-lt with according to law, and unless answers are required to be taken as hereinafter provided, it shall cite the garnishee to appear on the first day of the next term, if the main cause is pending in a court of record, or not less than ten days thereafter, if such court is then in session, or on the day set for trial, if in a justice's court, and answer such interrogatories as may be propounded, or he will be liable to pay any judgment which the plaintiff may obtain against the defendant.

SECTION 3940. Garnishee Required to Appear.—If the garnishee refuses to answer fully and unequivocally all the foregoing interrogatories, he shall be notified to appear and answer as above provided, and he may be so required in any event, if the plaintiff so notifies him.

SEC. 3941. Examination.—The questions propounded to the garnishee in court may be such as are above prescribed to be asked by the sheriff, and such others as the court may think proper.

SEC. 3943. Failure to Appear or Answer Cause Shown.—If duly summoned, and his fees tendered when demanded, he fails to appear and answer the interrogatories propounded to him without sufficient excuse, he shall be presumed to be indebted to the defendant to the

full amount of the plaintiffs, demand for a mere failure to
36 appear, but no judgment shall be rendered against him until he has had an opportunity to show cause against the same.

SEC. 3944. Paying or Delivering.—A garnishee may, at any time after answer, exonerate himself from further responsibility by paying over to the sheriff the amount owing by him to the defendant, and placing at the sheriff's disposal the property of the defendant, or so much of said debts and property as is equal to the value of the property to be attached.

SEC. 3945. Answer Controverted.—When the garnishee has answered the interrogatories propounded to him, the plaintiff may controvert them by pleading thereto, and an issue may be joined, which shall be tried in the usual manner, upon which trial such answer of the garnishee shall be competent testimony.

SEC. 3946. Judgment.—If in any of the above methods it is made to appear that the garnishee was indebted to the defendant, or had any of his property in his hands, at the time of being served with the notice of garnishment, he will be liable to the plaintiff, in case judgment is finally recovered by him, to the full amount thereof, or to the amount of such indebtedness or property held by the garnishee, and the plaintiff may have a judgment against the garnishee for the amount of money due from the garnishee to the defendant in the main action, or for the delivery to the sheriff of any money or property in the garnishee's hands belonging to the defendant in the main action within a time to be fixed by the court, and for the value of the same, as fixed in said judgment, if not delivered within the time thus fixed, unless before such judgment is entered the garnishee has delivered to the sheriff such money or property. Property so delivered shall thereafter be treated as if levied upon under the writ of attachment in the usual manner.

SEC. 3947. Notice to Defendant.—Judgment against the garnishee shall not be entered until the principal defendant shall have
37 had ten days' notice of the garnishment proceedings, to be served in the same manner as original motions.

SEC. 3948. Pleading by Defendant.—The defendant in the main action may, by a suitable pleading filed in the garnishment proceedings set up facts showing that the debt or the property with which it is sought to charge the garnishee is exempt from execution, or for any other reason is not liable for plaintiff's claim, and if issue thereon be joined by the plaintiff, it shall be tried with the issues as to the garnishee's liability. If such debt or property, or any part thereof, is found to be thus exempt or not liable, the garnishee shall be discharged.

SEC. 3951. Judgment Conclusive.—The judgment in the garnishment action, condemning the property or debt in the hands of the garnishee to the satisfaction of the plaintiff's demand, is conclusive between the garnishee and defendant.

SEC. 3952. Docket to Show Garnishments.—The docketing of the original case shall contain a statement of all the garnishments therein, and when judgment is rendered against a garnishee, the same shall distinctly refer to the original judgment.

SEC. 3953. Appeal.—An appeal lies in all garnishment cases at the instance of the plaintiff, the defendant, the garnishee, or an intervenor claiming the money or property.

Chapter 3.

Of Executions.

SECTION 3954. On Judgments or Orders—Attachment for Contempts.—Judgments or orders requiring the payment of money, or the delivery of the possession of property, are to be enforced by execution. Obedience to those requiring the performance of any other act is to be coerced by attachment as for a contempt.

SEC. 3957. On Demand of Party—Entries by Clerk.—Upon the rendition of judgment, execution may be at once issued by
38 the clerk on the demand of the party entitled thereto; who shall enter on the judgment docket the date of its issuance, and to what county and officer issued, the return of the officer, with the date thereof, the dates and amount of all moneys received or paid out of the office thereon; which entries shall be made at the time each act is done.

SEC. 3960. Form of Execution.—The execution must intelligibly refer to the judgment, stating the time when and place at which it was rendered, the names of the parties to the action as well as to the judgment, its amount, and the amount still to be collected thereon, if for money; if not, it must state what specific act is required to be performed. If it is against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment and interest out of property of the debtor subject to execution.

SEC. 3972. Persons Indebted May Pay.—After the rendition of judgement, any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness, or so much thereof as is necessary to satisfy the execution, and his receipt shall be a sufficient discharge therefor.

SEC. 3975. Garnishment.—Property of the defendant in the possession of another, or debts due him, may be reached by garnishment.

SEC. 3976. Expiration or Return of Execution—Return of Garnishments.—Proceedings by garnishment on execution shall not be effected by its expiration or its return. Where parties have been garnished under it, the officer shall return to the next term thereafter a copy of the execution with all his doings thereon, so far as they relate to the garnishments, and the clerk shall docket an action thereon without fee, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be.

SEC. 4011. Personal Earnings.—The earnings of a debtor who is a resident of the state and the head of a family for his
39 personal services, or those of his family, at any time within ninety days next preceding the levy, are exempt from liability for debt.

SEC. 4013. Unmarried Persons—Nonresidents.—There shall be exempt to an unmarried person not the head of a family, and to nonresidents, their own ordinary wearing apparel and trunk necessary to contain the same.

SEC. 4066. Proceedings in Justices' Courts.—The provisions of this chapter are intended to embrace proceedings in justices' courts, so far as they are applicable; and the terms "sheriff" and "clerk" are to be understood as qualified in this chapter in the same manner in this respect as in that relative to attachment.

Title XXII.

Of Justices of the Peace and Their Courts.

Chapter I.

SECTION 4476. Jurisdiction.—The jurisdiction of justices of the peace, when not specially restricted, is coextensive with their respective counties; but does not embrace actions for the recovery of money against actual residents of any other county, except as provided in this chapter.

SEC. 4477. Amount in Controversy.—Within the prescribed limit, it extends to all civil actions, except those by equitable proceedings, where the amount in controversy does not exceed one hundred dollars; and, by consent of parties in writing, it may be extended to actions where the amount claimed is not more than three hundred dollars.

SEC. 4480. In Replevin or Attachment—Against Nonresidents.—Actions in replevin may also be brought before any justice in the county in which the property is found. Actions aided by attachment may be brought against nonresidents of the state in any county and township wherein the property sought to be levied upon is found, and any action against such nonresidents may be brought in any county wherein any defendant is served with notice thereof.

SEC. 4484. Entries on Docket.—Each justice shall keep such docket by entering therein each action and each act done, with the proper date as follows:

1. The title of the action;
2. A brief statement of the nature and amount of the plaintiff's demand, and defendant's counter-claim, if any, giving date to each where dates exist;
3. The issuing of the notice and the return thereof;
4. The appearance of the parties;
5. Every adjournment, stating at whose instance and for what time;
6. The granting of a change of place of trial, and the name of the justice to whom the case is sent;
7. The trial, and whether by the justice or by a jury;
8. The verdict and judgment;
9. The issuance of each execution, to whom delivered, the re-

newals, if any, and the amount of judgment and costs to be collected thereunder;

10. The issuance of each writ of attachment or replevin or other process, to whom delivered, and the particulars thereof;

11. The taking of an appeal, if any;

12. The giving a transcript for filing in the clerk's office, or for setting off against another judgment.

13. A note of all motions made or demurrers interposed, and whether sustained or overruled.

SEC. 4485. Parties—Proceedings.—The parties to the action may be the same as in the district court, and all the proceedings prescribed for that court, so far as applicable and not herein changed, shall be pursued in justices' courts. The powers
41 of the court are only as herein enumerated.

SEC. 4486. How Commenced.—Actions in justices' courts are commenced by voluntary appearance or by notice.

SEC. 4487. Petition Not Necessary.—No petition need be filed except as in this chapter required. The notice must state the cause of the action in general terms, sufficient to apprise the defendant of the nature of the claims against him.

SEC. 4488. Form of Notice.—It must be addressed to the defendant by name, but if his name is unknown a description of him will be sufficient. It must be subscribed by the plaintiff, his attorney, or the justice before whom it is returnable.

SEC. 4489. What to State.—It must state the amount for which the plaintiff will take judgement if the defendant fails to appear and answer at the time and place therein fixed.

SEC. 4490. Time Fixed.—The time fixed in the notice must be not less than five nor more than fifteen days from the date, and it must be served not less than five days previous to the trial.

SEC. 4491. Service and Return.—The service and return thereto must be made in the same manner as in the district court except no service shall be made by publication other than is herein provided, nor shall any return made by another than the sheriff or a constable of the county be valid unless sworn to.

SEC. 4499. Pleadings.—The pleadings must be substantially the same as in the district court. They may be written or oral, but if required to be verified they must be in writing. If oral, they must in substance be written down by the justice in his docket.

SEC. 4522. Judgment Entered.—In cases of dismissal, or of judgment by confession or on the verdict of a jury, the judgment shall be rendered and entered upon the docket forthwith. In all other cases, it shall be done within three days after the cause is submitted to the justice for final action.

42 SEC. 4537. Transcripts Filed in Clerk's Office.—A party obtaining a judgment in a justice's court may cause a transcript thereof to be certified to the office of the clerk of the district court in the county.

SEC. 4538. Effect.—The clerk shall file the transcript as soon as received, and enter a memorandum thereof and the date of filing in the judgment docket and lien index, and from such entry it shall

be treated in all respects and in its enforcement as a judgment obtained in the district court. No execution shall issue from the justice's court after the filing of such transcript.

SEC. 4544. Garnishment.—Garnishment proceedings under execution shall be the same as in the district court, except, upon return of the garnishment being made to the justice who issued the execution, he shall docket a cause, fix a time, and cite the garnishee then to appear and answer.

SEC. 4579. Attachment.—Proceedings in attachment, except as modified in this chapter, shall be the same as in the district court, the justice performing the duties with reference thereto which are required of the clerk of that court. The petition must be verified, and claim more than five dollars, and, if a less sum is recovered, the plaintiff shall pay all the costs of the attachment.

SEC. 4580. Answers of Garnishee.—The constable has the same power to administer an oath to the garnishee in attachment or on execution, and to take his answer, as is given to the sheriff in like cases in the district court.

SEC. 4581. Appearance.—Garnishees may be required to appear and answer at the time fixed for the appearance of the parties to the action, and the conduct of the same shall be governed by the law relating to garnishments under attachments in the district court.

SEC. 4582. Attachment Without Personal Service.—In ac-
43 tions in which an attachment is sought, if it is made to appear by affidavit that personal service cannot be had on the defendant within the state, the justice, upon the return day, unless the defendant appear, shall make an order fixing the day for the trial, not less than sixty days thereafter, and requiring notice to be given by any constable as provided in the next section.

SEC. 4583. Notice by Posting.—Upon such order being made, at least sixty days' notice of the pendency of such action shall be given by posting up written or printed notices in three public places in the township where the action was commenced, which shall have the effect of a service by publication in the district court, and the justice shall proceed to hear the cause upon the day specified for that purpose; but no bond shall be required of the plaintiff after judgment as may be in the district court.

18th. Defendant offered and read in evidence volume 60, of Iowa, reports, pages 346 to 351, inclusive, containing decision of Supreme Court of Iowa, in case of Mooney v. Union Pacific Railway Company, Garnishee as follows:

Mooney v. U. P. R. R. Co., Garnishee.

"This is an action brought in the court below against defendant, C. F. Rollins, upon a promissory note. The Union Pacific Railway Company was attached as garnishee. There was a trial between the plaintiff and garnishee, and a judgment was rendered for the plaintiff, from which the garnishee appeals.

J. S. Shropshire and Baldwin & Wright, for appellant.
Clinton, Hart & Brewer, for appellee.

ROTHROCK, *J.*:

I. The cause was submitted to the court below, and is submitted to this court, upon an agreed statement of facts, of which the following is the substance:

"The appellant was indebted to the defendant, Rollins,
44 in the sum of three hundred dollars at the time the answer was filed. This sum was earned by Rollins as a mechanic in the employment of appellant in the State of Nebraska. He was hired in that State, and it was the custom of appellant to pay its employees thus hired, within that State, but there was no express contract as to where the wages should be paid. The general offices, and the offices of the pay-master and auditor of appellant, are in the state of Nebraska. By the laws of Nebraska, two hundred dollars of the amount due Rollins would have been exempt to him, and not liable to seizure for the payment of his debts in any suit brought in the courts of that State, being the amount of his wages for sixty days preceding the service of the garnishment notice. The original notice was served on Rollins personally, in the State of Nebraska, and the garnishment process was served on the appellant in Pottawattamie county, in this State. The appellant was then and is now, a corporation organized under the laws of the United States, and engaged in the operation of a line of railway, beginning at a point within the City of Council Bluffs, in Pottawattamie county, Iowa, and extending westward through the State of Nebraska. The plaintiff and Rollins were, at the commencement of this suit, and still are, residents of Nebraska, and plaintiff knew, when he commenced this suit that by the law of Nebraska, if there sued, the defendant would have two months' wages exempt from all process.

"Section 2618 of the Code provides that service of an original notice may be made by publication" in actions brought against a non-resident of this State, or a foreign corporation having in this State property or debts owing to such defendant, sought to be taken by any provisional remedies, or to be appropriated in any way." And debts due the defendant in an action aided by attachment are attached by the garnishment thereof. 2967. And it is a sufficient cause for attachment that the defendant is a non-resident of the state." 2951.

45 There was no service by publication in this case, but personal service was made upon defendant in the State of Nebraska. This supercedes the necessity of service by publication. 2621. And such personal service has the same force and effect, and the same jurisdiction is acquired, as would be if the service were by publication. Darrance v. Preston, 18 Iowa 396. It is contended by counsel for appellant that the debt from the railroad company to Rollins was not liable to attachment, because its situs was not in this State, but in the State of Nebraska. The facts show that the money due Rollins was earned in Nebraska and that he was a resident of the State, and that it was the custom of the railroad company to pay the wages of such employés within the State of Nebraska. The doctrine that a debt can have no locality separate from the party to whom it is due is

applicable upon the question of the situs of credits for the purpose of taxation.

"Such is the case of State tax on foreign held bonds—15 Wallace, 300, and other authorities cited by counsel for appellant. But this rule or legal fiction, as it is denominated in the books, cannot be applied in this State to attachment proceedings against non-resident defendants. To do so would abrogate the sections of the statute above cited, because, if all debts must be located with and attach to the person of the debtor, there could be no garnishment of a person in this State, owing a debt to a person resident of another State. As is said in Green v. Van Buskirk, 7 Wal., 139, attachment laws "necessarily assume that property has a situs entirely distinct from the owner's domicile." "The plaintiff occupies as against the garnishee, the position of the defendant with no more rights than the defendant had and liable to be met by any defense which the garnishee might make against an action by the defendant." Daniels & Co. v. Clark, 38 Iowa, 556. And we think if the defendant, Rollins could have maintained an action against the appellant in
46 this State for the recovery of his wages, it follows that the debt was within this State, and subject to attachment. Whether he could have maintained such action does not depend upon the question as to the custom to make payment in Nebraska, but whether appellant was subject to the jurisdiction of the courts of this State, which we will now proceed to consider."

I. It is contended that the court had no jurisdiction over the appellant, and a number of cases are cited which hold that where the garnishee is a non-resident, and is merely temporarily within the jurisdiction of the court, and is there served with process, the service is bad, and will not hold property in his hands belonging to the non-resident defendant. Authorities are also cited to the effect that a foreign corporation cannot be garnished, although it may have officers and members within the jurisdiction of the court, as well also as its books and records.

II. We have no occasion to discuss these authorities, because the Union Pacific Railroad Company is not merely temporarily within the jurisdiction of the courts of this State, nor is it a foreign corporation. It is a corporation organized under the laws of the United States, and engaged in the operation of a line of railway in Pottawattamie county, Iowa, and extending west through the State of Nebraska. It is as much a citizen of Iowa as it is of Nebraska; and there is no provision of the laws of the United States locating it in any State. But suppose we should concede it to be a foreign corporation operating a line of railway in another State and extending into this State. Under section 2582 of the Code, actions may be brought against railway corporations in any county in this State through which the line or road passes or is operated. And this applies to foreign corporations as well as those organized under the laws of this State. The reports of cases in this court are full of actions brought against foreign railroad corporations operating roads
47 in this State, and no one has ever questioned the jurisdiction. If we were to hold that these corporations are not subject to

the jurisdiction of our courts, the same as a natural person resident within the State, we would release at least three trunk lines, which traverse the State from east to west, from all subjection to the jurisdiction of our courts.

III. Lastly, it is insisted that this action was instituted by plaintiff in the court below with the fraudulent purpose of preventing the defendant from pleading the exemption laws, either of the State of Nebraska, or of this State, and to defraud and cheat him out of the exemptions he is entitled to under the laws of Nebraska.

We have determined that the Circuit Court had jurisdiction of the defendant, and also of the appellant, so far as to authorize the appropriation of the debt. There can be no doubt that there is an absolute right in a non-resident of this State to institute and maintain actions in our courts. We have held that, if a person residing in our jurisdiction be induced, under false pretenses or representations to come into another, for the purpose of there getting service upon him, the jurisdiction thus acquired will be held to have been fraudulently obtained, and the judgment will be void. Dunlap & Co. v. Cody, 31 Iowa, 260. In that case, and in all the authorities cited therein, there was actual fraud practiced to obtain the jurisdiction. The ground work of all the cases upon that subject is, that if unlawful or fraudulent means are resorted to for the purpose of bringing a party within the jurisdiction of a court, the law will interpose and afford a suitable remedy, because no lawful thing founded upon an unlawful act can be supported.

In the case at bar, the plaintiff was guilty of no actual fraud. He used no unlawful means to acquire jurisdiction of the parties or subject-matter, and while the proceeding operates as a
48 hardship on the defendant, we cannot say that juridiction was obtained by fraud, or by resort to any unlawful means."

Affirmed.

Defendant also offered in evidence Vol. 65, Iowa Reports Pages 670, 671 as follows:

Broadstreet v. Clark, Defendant, and the Chicago Milwaukee & St. Paul R'y Company, Garnishee. Appeal from O'Brien Circuit Court.

The defendant railroad company was garnished as the supposed debtor of its co-defendant. Judgment was rendered against both defendants, and they appeal.

SEEVERS, *J.*:

Upon being garnished, the railroad company answered that it was indebted to Clark, the judgment debtor, who was one of its employès in Dakota territory, and that he was a married man, and the head of a family and a resident of said territory when the work and labor were performed for which the indebtedness was incurred, and that the same had been earned within ninety days prior to

the garnishment; that under the laws of said territory said earnings were exempt from execution. Clark, the judgment debtor intervened in the garnishment proceeding, and in substance pleaded the same facts as above stated, and asked that the garnishee be discharged. Upon motion of the plaintiff, judgment on the answer of the garnishee and petition of intervention was rendered for the plaintiff, and we are required to determine whether the court erred in the rendition of such judgment.

We regard it as the settled rule in this state that the exemption laws of another state or territory cannot be pleaded or relied on as a defense by either the garnishee or judgment debtor. Newell v. Hayden, 8 Iowa, 140; Leiber v. Union Pac. R'y Co., 49 Iowa, 688; Mooney v. Union Pac. R'y Co., 60 Iowa, 346. See, also Burlington & M. R. R'y Co. v. Thompson, 31 Kan., 180, and authorities there cited.

Affirmed.

V./M.

49 19th. Plaintiff offered in evidence the following from the Code of Iowa.

SECTION 4011. Personal Earnings.—The earnings of a debtor who is a resident of the state and the head of a family for his personal services, or those of his family, at any time within ninety days next preceding the levy, are exempt from liability for debt.

SECTION 4018. Sending Claims Out of State to Defend Exemption.—Whoever, whether as principal, agent or attorney, with intent to deprive a resident in good faith of the state of the benefit of the exemption laws thereof, sends a claim against such resident and belonging to a resident, to another state for action, or causes action to be brought on such claim in another state or assigns or transfers such claim to a nonresident of the state, with intent that action thereon be brought in the courts of another state, the action in either case being one which might have been brought in this state, and the property or debt sought to be reached by such action being such as might, but for the exemption laws of this state, have been reached by action in the courts of this state, shall be guilty of a misdemeanor, and punished by a fine of not less than ten nor more than fifty dollars.

SEC. 3885. Bond.—In all cases before it can be issued, the plaintiff must file with the clark a bond for the use of the defendant, with sureties to be approved by such clerk, in a penalty at least double the value of the property sought to be attached, and in no case less than two hundred and fifty dollars in a court of record, nor less than fifty dollars if in a justice's court, conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing out of the attachment.

SEC. 4014. Persons Starting to Leave the State.—Where the debtor, if the head of a family, has started to leave this state, he shall have exempt only the ordinary wearing appearel of
50 himself and family, and such other property, in addition, as he may select, in all not exceeding seventy five dollars in

value; which property shall be selected by the debtor and appraised according to the provisions of this code relating to the discharge of attache- property but any person coming into this state with the intention of remaining shall be considered a resident.

SEC. 4016. Absconding Debtor.—When a debtor absconds and leaves his family, such property as is exempt to him under this chapter shall be exempt in the hands of his wife and children, or either of them.

SEC. 4017. Failure to Claim Exemption.—And person entitled to any of the exemptions mentioned in this chapter does not waive his rights thereto by failing to designate or select such exempt property, or by failing to object to a levy thereon, unless he fails or neglects to do so when required in writing by the officer about to levy thereon.

Twentieth. It is further stipulated that exhibit 8 is offered in evidence by the defendant for the purpose shown upon its face.

Mr. WELLS: At the close of the testimony as offered by the stipulation, the defendant moves the court as follows:

First. To find for the defendant.

Second. In case the Court finds for the plaintiff not to allow him in excess of the sum of $3.89, and interest.

There being no further testimony both sides closed.

Copy Statement.

M.

JULY 20", 1907. [189-.]*

William Hall in Account with James M. Locke.

		Cr.	Dr.
1901.			
Jan'ry 30".	To Professional Services.....	....	$15.00
1905.			
Sept. 15".	" " "	....	25.00
		....	$40.00

Ex. 3.

51 Endorsed: Filed July 20, 1907.

[* Figures enclosed in brackets erased in copy.]

Copy.

Petition for Attachment, 70.

In Justice's Court in and for Creston Township, Union County, State of Iowa.

JAMES M. LOCKE, Plaintiff,
vs.
WILLIAM HALL, Defendant.

Petition.

The plaintiff states that on or about January 30″ 1901 he performed professionel services for Defendant at his instance & request & that said service- were well and reasonably worth the sum of $15.00 no part of which has been paid & the same is now due. That on or about Sept. 15, 1905 plaintiff at defendant's request performed professional services for Defendant which were well and reasonably worth $25.00 no part of which has been paid & the same is now due that there is now due the Plaintiff thereon, from the defendant, the sum of Forty Dollars, for which he demands judgment, with interest and costs.

The Plaintiff further states: That Defendant is a nonresident of the state.

He therefore asks a Writ — Attachment against the goods and chattels, rights and credits of the Defendant.

JAMES M. LOCKE,
Attorney for Plaintiff.

Ex. 3.

Copy.

STATE OF IOWA,
Union County, ss:

52 I, James M. Locke being duly sworn, depose and say that I am the Plaintiff in the within entitled action; and I have read the within petition, and that the statements are true as I verily believe.

JAMES M. LOCKE.

Sworn to before me and subscribed in my presence by the said James M. Locke this 20″ day of July 1907.

[NOTARY SEAL.] WALTER J. LOCKE,
Notary Public.

Endorsed: Copy. James M. Locke vs. William Hall. Petition in Attachment Filed July 20-1907 N. Skinner J. P. James M. Locke Att'y for Pl'ff.

Copy.

Justice Notice No. 5.

To William Hall.

SIR: Your are hereby notified that James M. Locke claims of you Fifty Dollars, justly due for professional services rendered for you at your instance and request as shown by Petition on file in the court of N. Skinner J. P. of Union County Iowa and unless you appear at the office of N. Skinner a Justice of the Peace in and for Creston Township, Union County, Iowa, on the 27" day of July A. D., 1907, at 9 o'clock A. M., and make defence to said claim judgment will be rendered against you for the full amount, with interest and costs.

Given under my hand at Creston, Iowa this 20" day of July A. D., 1907.

N. SKINNER,
Justice of the Peace.

Copy.

STATE OF IOWA,
Union County, ss:

53 I hereby certify and return that the within came into my hands for service on the 20" day of July 1907, and that on the 20" day of July 1907 I personally served the same upon the within named William Hall by reading said notice to him in his presence & hearing & delivering him a true copy of the same. All done in Creston township Union County Iowa.

R. CAMPBELL,
Constable.

Constable's Fees:

Service	$.50
Mileage	.10
Copy	.10
	$.70

Endorsed: Copy. Justice Notice. No. 424. James M. Locke vs. William Hall. Filed July 22-1907.

Copy.

Writ of Attachment, 77.

JAMES M. LOCKE, Plaintiff,
vs.
WILLIAM HALL, Defendant.

Before Me, N. Skinner, a Justice of the Peace in and for Creston Township, Union County, Iowa.

STATE OF IOWA,
Union County, ss:

To the Sheriff or Constable of said County, Greeting:

Whereas, the Plaintiff in the above action has filed his petition, under oath, in the office of N. Skinner a Justice of the Peace, in and for the County and State aforesaid, stating that the Defendant is justly indebted to the Plaintiff in the sum of Forty Dollars and as Plaintiff verily believes, the said Defendant is a non-resident of the State of Iowa and asking that a Writ of Attachment may issue against the Goods, Chattels, Property and Effects of said De-
54 fendant, or so much thereof as may be necessary to secure the Plaintiff's claim, and the said Plaintiff having filed in my office his attachment bond in the sum of One hundred and fifty Dollars conditioned that the said Plaintiff will pay all damages which the Defendant may sustain by reason of the wrongful suing out of said Writ of Attachment.

Therefore, in the name of the State of Iowa you are conmanded to attach the Goods and Chattels, Property and Effects of said Defendant whereever the same may be found in your County, or so much thereof as may be necessary to satisfy the above stated indebtedness, together with interest and costs of suit, and safely preserve the same to be dealt with according to law, and make legal return of this writ to me, at my office in Creston township Union County Iowa on the 27″ day of July 1907 at 9 o'clock, A. M.

In witness whereof, I, N. Skinner Justice of the Peace have hereunto subscribed my name, at my office in Creston Iowa this 20″ day of July 1907.

N. SKINNER,
Justice of the Peace.

Ex. 3.

Copy.

STATE OF IOWA,
Union County:

I hereby certify and return that the within "writ" came into my hands on the 20″ day of July 1907 and that on the 20″ day of July 1907 I personally served the same by attacking the Chicago Bur-

lington & Quincy Rail Road Company, as garnishee, in Creston township Union County Iowa.

R. CAMPBELL,
Constable.

Fee:

Service.....	$.50
Mileage.....	10
	.60

55 Endorsed: Copy. Writ of Attachment. No. 424. James M. Locke vs. William Hall. Filed July 20, 1907. N. Skinner, Justice of the Peace.

Copy.

Garnishee Notice.

STATE OF IOWA,
Union County, ss:

To The Chicago, Burlington & Quincy Railroad Company.

SIR: You are hereby notified that you are attached as Garnishee by virtue of a writ of Attachment issued by N. Skinner J. P. in and for the County and State aforesaid in a cause wherein James M. Locke — Plaintiff and William Hall Defendant.

You are hereby notified and required not to pay any debt due by you to the said Defendant William Hall or hereafter to become due from you to said Defendant. And you must retain possession of all property of said Defendant now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law.

You are also notified and required to be and appear at the office of N. Skinner a Justice of the Peace in and for Creston Township, Union County State of Iowa, on the 27″ day of July A. D., 1907, at 9 o'clock, A. M. and answer such interrogations as may then be propounded to you, or you shall be liable to pay the entire judgment, which the said plaintiff shall obtain against the defendant.

R. CAMPBELL,
Constable.

July 20″ 1907.

Copy.

STATE OF IOWA,
Union County, ss:

I hereby certify and return that the within came into my hands for service on the 20″ day of July 1907 and that on the 20″ day of July 1907 I personally served the same upon the within
56 named Chicago Burlington & Quincy Rail Road Company by personally delivering to Frank Easton agent of said Railroad Company a true copy on the 20 day of July 1907 and the said

Frank Easton agent accepted service for the said Chicago Burlington & Quincy Rail Road Company.

All done in Creston township Union County Iowa.

R. CAMPBELL,
Constable.

Endorsed: Copy. Garnishee Notice. James M. Locke vs. C. B & Q. R. R. in suit of James M. Locke vs. William Hall. Filed July 20-1907. N. Skinner J. P.

Copy.

Garnishee Notice to Defendant, No. 77.

STATE OF IOWA,
Union County, ss:

To William Hall:

You are hereby notified that The Chicago Burlington & Quincy Rail Road Company has been attached as Garnishee by virtue of a Writ of Attachment issued by N. Skinner Justice of the Peace in and for the County and State aforesaid, in a cause wherein James M. Lock is plaintiff and yourself *is* defendant.

You are also notified that said Chicago Burlington & Quincy Rail Road Company as Garnishee is required to be and appear at the office of N. Skinner Justice of the peace in Creston, Iowa, at 9 o'clock A. M. on the 27″ day of July 1907, and answer such interrogatories as many be propounded to *him* as to *his* probable indebtedness to you, and that unless you appear on said day, and show cause why judgment shall not be rendered against *him* as being indebted to you, judgment will be rendered against *him* for the amount found to be due you by *him*.

Dated at Creston, Iowa, this 20″ day of July 1907.

R. CAMPBELL,
Constable.

57

Copy.

STATE OF IOWA,
Union County, ss:

I hereby certify and return, that the within notice came into my hands for service on the 20″ day of July 1907 & on the same day I personally served the same on the Defendant William Hall, by reading the same to him in his presence & hearing & delivering to him a true copy of the same. All done in Creston township Union County Iowa.

R. CAMPBELL, *Constable.*

Fees:

Service.....	.50
Mileage.....	.10
Copy.....	.10
	.70

Endorsed: Copy Garnishee Notice to Defendant. James M. Locke vs. Willam Hall. Filed July 22, '07.

Copy.

Answer of Garnishee.

JAMES M. LOCKE
vs.
WILLIAM HALL.

Before N. Skinner, Justice of the Peace in and for Creston Township, Union County, Iowa.

On this 27 day of July A. D., 1907, A. L. Thornton ag't of the Chicago, Burlington & Quincy Rail Road Company appeared before me as Garnishee in the above entitled cause, who being by me first duly sworn according to law, desposes and says in answer to the following questions:

1st. Are you in any manner indebted to defendant in this suit, or do you owe him money or property which is not yet due? If so state the particulars.

Answer. Yes: The Chicago, Burlington & Quincy Rail
58 Road Company owes William Hall the sum of $155.98.

2d. Have you in your possession, or under your control, any property, rights or credits of said defendant? If so what is the value of the same, and state all the particulars.

Answer. Only as before stated.

3d. Do you know any debts owed to said defendant, whether due or not due; or any property, rights or credit belonging to him and now in the possession or under the control of others? If so state the particulars.

Answer. No.

CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY,
By A. L. THORNTON, *Agent.*

Subscribed and sworn to by said A. L. Thornton agent before me July 27, 1907.

N. SKINNER,
Justice of the Peace.

Endorsed: Copy. Answer of Garnishee. No. 424. James M. Lock vs. William Hall & Chicago, Burlington & Quincy Rail Road Company Garnishee. Filed July 27, '07.

JAMES M. LOCKE
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Garnishee at the Suit of

JAMES M. LOCKE
vs.
WILLIAM HALL.

Before N. Skinner, a Justice of the Peace in and for Creston Township, Union County, Iowa.

Be it remembered that on the 20″ day of July 1907, Robert Campbell, Constable, by virtue of a writ of attachment issued by the above named Justice of the Peace, attached the Chicago, Burlington & Quincy Rail Road Company as garnishee, in the above entitled cause citing it to appear and make answer before N. Skinner
59 Justice of the Peace at his office in Creston township Union County Iowa a- 9 o'clock A. M. on the 27″ day of July 1907. And now on this 27″ day of July 1907 the garnishee, The Chicago, Burlington & Quincy Rail Road Company by its agent, A. L. Thornton appears and makes answer in the above entitled cause which answer was duly reduced to writing subscribed & sworn to by the said A. L. Thornton, ag't, from which it appears that the garnishee is indebted to the defendant William Hall in the sum of $155.98. And the court being fully advised in the premises, it is therefore ordered and adjudged by the court .that the plaintiff, James M. Locke have and recover of the Chicago, Burlington & Quincy Rail Road Company, garnishee, Judgment for the sum of fifty six and 20/100 dollars out of the funds in its hands belonging to the said William Hall with six per cent interest per annum from this date until paid, the proceeds of this Judgment to be applied in liquidation of a Judgment and costs obtained herein on the 27″ day of July 1907 by said Plaintiff against the said William Hall.

N. SKINNER,
Justice of the Peace.

And now on this 31″ day of July 1907 Rec'd Judgment & costs in full of Chicago, Burlington & Quincy Rail Road Company and the garnishee is this day discharged.

N. SKINNER,
Justice of the Peace.

Transcript.

Proceeding in Attachment & Garnishment.

Copy.

STATE OF IOWA,
Union County, ss:

I, N. Skinner, Justice of the Peace of Creston Township Union County State of Iowa Do Hereby certify That the within and
60 foregoing is a true and perfect transcript from my docket in the cause of James M. Locke against the Chicago, Burlington & Quincy Rail Road Company, garnishee at the suit of James M. Lock vs. William Hall. As fully as the same remains on file and of record in my office. In Witness whereof I have hereunto set my hand this — day of —— 1908.

—— ——.

Ex. 3.

Endorsed: Transcript. James M. Locke vs. The Chicago, Burlington and Quincy Rail Road Company at the suit of James M. Locke vs. William Hall from Docket of N. Skinner J. P. Page 604.

Transcript.

Civil. No. 114.

JAMES M. LOCKE, Plaintiff,
vs.
WILLIAM HALL, Defendant.

Before N. Skinner, Justice of the Peace in and for Creston Township, in Union County, Iowa.

Petition in Attachment.

Be it remembered, that on the 20″ day of July A. D. 1907 said Plaintiff, James M. Locke filed herein as his claim and cause of action against the Defendant William Hall an account claiming of said Defendant Fifty dollars for professional services rendered defendant in the years 1901 & 1905, Plaintiff in his petition states that Def'd't is a non-resident and asks that a writ of attachment issue against Defendant's goods chattels rights & credits, Plaintiff files his attachment bond which is approved by the court, thereupon I issue an original notice & writ of attachment to the said defendant William Hall returnable before me at my office in said township, on the 27″ day of July A. D. 1907 at 9 o'clock A. M., and delivered the same to Robert Campbell Constable for service, who returned said notice & writ with his return thereon, from which it appears
61 that he received said notice & writ for service on the 20″ day of July A. D. 1907, and that he did, on the 20th day of July

1907 serve the writ by attaching the same on the said defendant, Chicago, Burlington & Quincy Rail Road Co. in the manner required by law, *in* All done in Creston Township, in said County of Union and State of Iowa.

And now, on this 27″ day of July 1907, this cause coming on for hearing, I wait one hour after time set for trial, Defendant appears not, nor any person for him but makes default. Plaintiff appears in person and proves claim prays for Judgment.

The court being fully advised in the premises, it is therefore ordered and adjudged by the Court, that the Plaintiff have and recover of the Defendant Wm. Hall judgment for the sum of Forty-eight and 65/100 Dollars with 6 per cent. interest per annum from date, together with the costs of this action, taxed at seven and 55/100 Dollars and that execution issue therefor.

N. SKINNER,
Justice of the Peace.

The above Judgment & costs satisfied July 31-1907 By applying thereto, the money paid into court by the Chicago, Burlington & Quincy Rail Road Company, garnishee on Judgment obtained against said Rail Road Company, garnishee July 27-1907 in above entitled cause. The marginal entries on docket showing the receipt of $56.20 in full of Judgment & costs July 31 1907.

N. SKINNER,
Justice of the Peace.

STATE OF IOWA,
Union County, ss:

I, N. Skinner Justice of the Peace of Creston Township, Union County, State of Iowa, do hereby certify, That the within and foregoing is a true and perfect transcript from my docket in the cause of James M. Locke against William Hall as fully as the same
62 remains on file and of record in my office, also that the copies of the original notice and return of service thereon & of the notice to the garnishee and the notice to defendant of garnishment and the services thereon are full true and perfect copies of the notices and returns thereon as they appear on file in said cause, in my office also the answer of garnishee is a true copy of said answer as filed.

In witness whereof, I have hereunto set my hand this 21″ day of March A. D. 1908.

N. SKINNER,
Justice of the Peace.

Ex. 3.

Bill of Costs.

Justice's Fees (—— ——, J. P.):

Docketing	$——
Notice	——
Trial	——
Judgment	——
Execution	——
Continuance	——

Constable's Fees (—— ——, Constable):

Serving Notice ..... $——
Serving Execution ..... ——

Witness Fees:

—— —— ..... $——
—— —— ..... ——

Total ..... $——

STATE OF IOWA,
—— *County, ss:*

I, —— —— Justice of the Peace, do hereby certify that the foregoing is a full, true and correct bill of the costs accured
63 in this case, and that the same has been fully paid by —— —— the — therein.
Witness my hand this — day of —— 190–.

—— ——,
Justice of the Peace.

Endorsed: Civil. No. 424. James M. Locke vs. William Hall. Transcript from Docket of N. Skinner, J. P. Filed in my office —— — 190–. —— —— Clerk —— Court.

Certificate of Acknowledgment.

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell Clerk of the District Court in and for said county, do hereby certify that N. Skinner before whom the foregoing instrument of writing was proven or acknowledged, was at that time and now is an acting and qualified Justice of the Peace in and for said county and is duly authorized to take acknowledgments, and I verily believe the name N. Skinner subscribed thereto, to be his genuine signature and that all his official acts as such are entitled to full faith and credit, and that the same is executed and acknowledged according to the Laws of the State of Iowa.
Witness my hand and the Seal of the District Court of Union County, Iowa, this 23 day of March 1908.

[SEAL.] CLARENCE McCONNELL,
Clerk of the District Court.

Certificate of Attestation.

STATE OF IOWA,
—— *County, ss:*

I, —— —— Clerk of the District Court, in and for said County, in the State aforesaid, do hereby certify the foregoing to be a
64 true, perfect and complete copy of — as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in — this — day of ——, 190–.

—— ——, *Clerk.*

STATE OF IOWA,
Union County, ss:

I, H. M. Towner, one of the Judges of the 3rd Judicial District of Iowa, do hereby certify that Clarence McConnell whose name is subscribed to the foregoing Certificate of Attestation, now is and was at the time of signing and sealing the same, Clerk of the District Court in and for Union County, Iowa, duly elected and qualified to office; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere; and that his attestation is in due form of law and by proper officer.

Given under my hand this 23″ day of March A. D. 1908.

[SEAL.] H. M. TOWNER,
Judge 3rd Judicial District of Iowa.

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell Clerk of the District Court in and for said County, in the state aforesaid, do hereby certify that Hon. H. M. Towner whose genuine signature appears to the foregoing Certificate was at the time of signing the same Judge of the 3rd Judicial District of Iowa, duly commissioned and qualified; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office in Creston, Iowa, this
65 23 day of March A. D. 1908.

CLARENCE McCONNELL,
Clerk District Court.

Ex. 3.

Endorsed: Certificate of Attestation in District Court Union County, Ia. Filed — 190–.

——— ———,
Clerk of District Court.

CRESTON, IOWA:

B. N. TOREY
vs.
W. H. HALL & MRS. HALL.

Before J. B. Kirsch, Justice of the Peace in and for Creston Township, in Union County, Iowa.

I hereby certify that I am Justice of the Peace and Exofficio successor to the above mentioned J. B. Kirsch that by virtue of my office I am custodian of the books and official papers of the aforesaid J.

B. Kirsch J. P. as far as they are known to be in existance. And I further certify that the original papers in the above mentioned cause have been taken from the files of the aforesaid J. B. Kirsch J. P. and are not in my possession or their whereabouts known to me.

All the above statements being true as I verily believe.

N. SKINNER,
Justice of the Peace in and for Creston Township, Union County, State of Iowa.

Ex. 4.

Transcript.

Civil. No. 114.

B. N. TOREY, Plaintiff,
vs.
W. H. HALL and Mrs. HALL, Defendants.

Before J. B. Kirsch, Justice of the Peace in and for Creston Township, in Union County, Iowa.

66 Be It Remembered, that on the 31" day of March A. D. 1894 said Plaintiff, B. N. Torey filed herein as — claim and cause of action against the Defendants' account claiming of said Defendants Twenty one dollars Justly due him on account with interest thereon for professional services rendered you thereupon I issue an original notice to the said Defendant- W. H. Hall & Mrs. Hall returnable before me at my office in said township, on the 25" day of April A. D. 1894 at 9 o'clock A. M., and delivered the same to J. B. Scofield Constable for service, who returned said notice with his return thereon, from which it appears that he received said notice for service on the 18th day of April A. D. 1894, and that he did, on the 19 day of April 1894 serve the same on the said defendant, in the manner required by law, in Creston Township, in said County of Union and State of Iowa.

And Now, on this 25 day of April 1894, this cause coming on for hearing, I wait one hour after time fixed for trial. Defendants appear not but make Default. Plaintiff appears proves up claim and prays Judgment.

The court being fully advised in the promises, It is Therefore Ordered and Adjudged by the Court, that the Plaintiff have and recover of the Defendants judgment for the sum of Twenty two and 40/100 Dollars with six per cent, interest per annum from date, together with the costs of this action, taxed at Three and 80/100 Dollars and that execution issue therefor.

J. B. KIRSCH,
Justice of the Peace.

Appeal Bond approved and filed this — day of ——, 190–, Transcript in this suit filed in the office of Clerk of the District Court, this 8" day of July 1907.

N. SKINNER,
Justice of the Peace.

67 STATE OF IOWA,
Union County, ss:

I, N. Skinner Justice of the Peace of Creston Township, Union County, State of Iowa, Do Hereby Certify, That the within and foregoing is a True and Perfect Transcript from my docket in the cause of B. N. Torey against W. H. Hall and Mrs. Hall as fully as the same remains on file and of record in my office.

In Witness Whereof, I have hereunto set my hand this 19″ day of March A. D. 1908.

N. SKINNER,
Justice of the Peace.

Ex. 4.

Bill of Costs.

Justice's Fees: (—— ——, J. P.)

Docketing	$———
Notice	———
Trial	———
Judgment	———
Execution	———
Continuance	———

Constable's Fees (—— ——, Constable):

Serving Notice	$———
Serving Execution	———

Witness Fees:

——	———
	———
Total	$———

STATE OF IOWA,
—— *County, ss:*

I, —— ——, Justice of the Peace, do hereby certify that the foregoing is a full, true and correct bill of the costs accured in this case, and that the same has been fully paid by —— —— the — therein.

Witness my hand this — day of —— 190–.

—— ——,
Justice of the Peace.

68 Endorsed: Civil. No. —. —— —— vs. —— ——.
Transcript From Docket of —— ——, J. P. Filed in my office — 190–. —— ——, Clerk — Court.

Certificate of Acknowledgement.

STATE OF IOWA,
Union County, ss:

I Clarence McConnell Clerk of the District Court in and for said county, do hereby certify that N. Skinner before whom the fore-

going instrument of writing was proven or acknowledged, was at that time and now is an acting and qualified Justice of the Peace in and for said county and is duly authorized to take acknowledgements, and I verily believe the name N. Skinner subscribed thereto, to be his genuine signature and that all his official acts as such are entitled to full faith and credit, and that the same is executed and acknowledged according to the Laws of the State of Iowa.

Witness my hand and the Seal of the District Court of Union County, Iowa, this 23 day of March 1908.

[SEAL.] CLARENCE McCONNELL,
Clerk of the District Court.

Certificate of Attestation.

STATE OF IOWA,
—— *County, ss:*

I, —— ——, Clerk of the District Court, in and for said County, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of — as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in — this — day of —— 190–.

——, *Clerk.*

69 STATE OF IOWA,
Union County, ss:

I, H. M. Towner, one of the Judges of the 3rd Judicial District of Iowa, do hereby certify that Clarence McConnell whose name is subscribed to the foregoing Certificate of Attestation, now is and was at the time of signing and sealing the same, Clerk of the District Court in and for Union County, Iowa, duly elected and qualified to office; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere; and that his attestation is in due form of law and by proper officer.

Given under my hand this 23 day of March A. D. 1908.

H. M. TOWNER,
Judge 3rd Judicial District of Iowa.

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell Clerk of the District Court in and for said County, in the state aforesaid, do hereby certify that Hon. H. M. Towner whose genuine signature appears to the foregoing Certificate was at the time of signing the same Judge of the 3rd Judicial District of Iowa, duly commissioned and qualified; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed

the seal of said court at my office in Creston, Iowa, this 23 day of March A. D. 1908.

[SEAL.] CLARENCE McCONNELL,
Clerk District Court.

Ex. 4.

Endorsed: Certificate of Attestation in District Court Union County, Ia. Filed — 190–. —— ——, Clerk of District Court.

70 *Transcript.*

Civil. No. 114.

B. N. TORREY, Plaintiff,
vs.
W. H. HALL & Mrs. HALL, Defendants.

Before J. B. Kirsch, Justice of the Peace in and for Creston Township, in Union County, Iowa.

Be It Remembered, That on the 31″ day of March A. D., 1894 said Plaintiff B. N. Torrey filed herein as — claim and cause of action against the Defendants' Account claiming of said Defendant- Twenty-one Dollars justly due him on account with interest thereon for professional services rendered you. Thereupon I issued an original notice to the said defendant- W. H. and Mrs. Hall returnable before me at my office in said township, on the 25″ day of April A. D., 1894 at 9 o'clock A. M., and delivered the same to J. B. Schofield Constable for service, who returned said notice with his return thereon, from which it appears that he received said notice for service on the 18″ day of April A. D., 1894, and that he did on the 19″ day of April A. D. 1894, serve the same on the said defendant in the manner required by law, in Creston Township in said County of Union and State of Iowa.

And Now, on this 25″ day of April A. D., 1894, this cause coming on for hearing I wait one hour after time fixed for trial, Defendants appear not, but make default. Plaintiff appears, proves up claim and prays judgment,

The Court being fully advised in the premises, It Is Therefore Ordered and Adjudged by the Court, That the Plaintiff have and recover of the Defendants judgment for the sum of Twenty-two & 40/100 Dollars, with 6 per cent. interest per annum from date, together with the costs of this action taxed at Three and 80/100 Dollars and that execution issue therefor.

J. B. KIRSCH,
Justice of the Peace.

71 Appeal bond approved and filed this — day of ——, 190–.

Transcript and all other papers in this suit filed in the office of the Clerk of the District Court, this 8″ July 1907.

N. SKINNER,
Justice of the Peace.

STATE OF IOWA,
Union County, ss:

I, N. Skinner Justice of the Peace of Creston Township, Union County, State of Iowa, do hereby certify, That the within and foregoing is a true and perfect transcript from my docket in the cause of B. N. Torrey against W. H. Hall & Mrs. Hall as fully as the same remains on file and of record in my office.

In witness whereof, I have hereunto set my hand this 8 day of July A. D., 1907.

N. SKINNER,
Justice of the Peace.

Ex. 5.

Bill of Costs.

Justice's Fees (J. B. Kirsch, J. P.):

Docketing	$ .50
Notices	.50
Trial	
Judgment	1.00
Execution	.50
Continuance, Transcript (N. Skinner, J. P.)	.50

Constable's Fees (J. B. Schofield, Constable):

Serving Notices	$1.30
Serving Execution	
Total	$4.30

Witness' Fees:

	$
Total	

72 STATE OF IOWA,
Union County, ss:

I, N. Skinner Justice of the Peace, do hereby certify that the foregoing is a full, true and correct bill of the costs accrued in this case, and that the same has been fully paid by B. N. Torrey the Plaintiff therein, except transcript fee of 50 cents due N. Skinner J. P.

Witness my hand this 8" day of July A. D., 1907.

N. SKINNER,
Justice of the Peace.

Endorsed: Civil. No. —. B. N. Torrey vs. W. H. & Mrs. Hall. Transcript From Docket of —— —— J. P. Filed in my office July 8 1907. Clarence McConnell. Clerk District Court.

Execution on Transcript.

In the District Court of the State of Iowa in and for Union County.

B. N. TORREY
vs.
W H. HALL & Mrs. HALL.

The State of Iowa to the Sheriff of Union County, Greeting:

Whereas, It appears to us of record that on the 19″ day of April 1894 a judgment was rendered by J. B. Kirsch a Justice of the Peace of said County in a certain cause then pending before him, wherein B. N. Torrey — Plaintiff, and W. H. Hall and Mrs. Hall — Defendants, for the sum of Twenty-two & 40/100 dollars, principal, and Three & 80/100 dollars cost of suit, was rendered against the said W. H. Hall & Mrs. Hall and attorney's fee — dollars and in favor of the said B. N. Torrey a transcript of which said judgment was filed in the office of the Clerk of the District Court of Union County, Iowa, on the 8″ day of July 1907 at — o'clock — — of said day.

73 And it further appearing from the records of our Court that there is still due on said judgment the sum of Twenty-two & 40/100 dollars and interest thereon at the rate of 6 per cent. per annum from date of judgment.

Now, therefore, you are hereby commanded that — the property, goods and chattels, and for the want thereof, the lands and tenements of the said W. H. Hall & Mrs. Hall, subject to execution, you cause to be made the sum of Twenty-two & 40/100 dollars and — cents, together with interest thereon at the rate of 6 per cent. from the 19″ day of April 1894 until paid; also Three and 80/100 dollars, cost of suit, endorsed on transcript, and also the still further sum of Two and 25/100 dollars the costs that have accured in said action since judgment was rendered, and all costs which may accrue by virtue of this writ, and make due return hereof to our said District Court within seventy days from this date.

Witness Clarence McConnell Clerk of the District Court of said County, with the seal thereof hereto affixed at office in Creston, this 26″ day of July A. D. 1907.

[SEAL.] CLARENCE McCONNELL, *Clerk.*

Ex. 5.

STATE OF IOWA,
—— *County, ss:*

—— ——, Plaintiff,
vs.
—— ——, Defendant.

Sheriff's Return on Execution.

By virtue of — Execution, to me directed by the Clerk of the — Court of said County, — in favor of —— —— and against

—— —— for the sum of — dollars, I did, on the — day of —— A. D. 18—, levy on the property of the said —— —— described as follows, to-wit: —

74 All situate in said County of —— and State of Iowa. And after the said levy, I did, previous to offering the same for sale, give four weeks' notice of the time and place of said sale, by publishing notice thereof once in each week for four consecutive weeks immediately preceding the day of sale, in the ——, a weekly newspaper, printed and published in said County, and also by posting up written notices thereof in three public places in said County, one of which was at the place where the last —— Court was held ——. And in persuance of the said several notices, on the — day of —— A. D. 18— at — o'clock — M. of the same day, at the door of the Court House in —— in said County, I exposed to sale, by public outcry, the aforesaid premises to the highest bidder therefor; and —— —— then and there bid for the before-mentioned premises as follows, to-wit: —

In all of which the said —— —— was the highest bi*n*der, and the same was, in due form of law struck off to —— —— as purchaser thereof — and this Execution returned satisfied in — by virtue of said sale.

—— ——,
Sheriff —— County, Iowa.

Whole amount of execution	$
Interest	$
Costs endorsed on execution	$
Service and mileage making levy	$
Notice of sale to defendant	$
Posting notices of sale	$
Summoning appraisers	$
75 Appraiser's fees	$
Selling property	$
Per cent for collecting	$
Printer's fees for pub'g notice of sale	$
Deed or Certificate of purchase	$
Clerk's fees for recording sale	$
Total amount	$

Ex. 5.

STATE OF IOWA,
Union County:

I received this writ on the 26″ day of July 1907 and served the same upon 26″ day of July 1907 by garnishing Chicago, Burlington and Quincy Railroad Company, by serving same on A. L. Thornton, he being agent of said Company at Creston, Iowa, by order of Plaintiff's Attorney, W. J. Locke.

Endorsed: Execution on transcript. B. N. Torrey vs. W. H. & Mrs. Hall. In the Dist. Court. Record — Page —. Judgment

Docket, I. Page 219. Damages, $22.40. County Costs, $6.05. Sheriff's Costs, —. This Writ, $.50. Interest from Apr. 19–1894 $— at 6%. Total, $—. W. J. Locke, Attorney.

In the Dist. Court of Union County, Iowa, August Term, 1907.

B. N. TORREY
vs.
W. H. HALL, MRS. HALL.

Notice to Garnishee.

To Chicago, Burlington & Quincy Railroad:

You are hereby notified that you are attached as garnishee of the defendant in the above entitled cause, as a supposed
76 debtor of the said defendant, and that you are required not to pay any debt due by you to the said defendant, or hereafter to become due, and that you must retain possession of all property of said defendant, now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law. The amount to be retained by you not to exceed the sum or value of $One Hundred ($100.00) Dollars.

And you are also notified that you are required to appear before the District Court in and for said County, on the first day of the next term thereof, to-wit: on the 26″ of August A. D., 1907, where said case is pending, and answer such interrogatoires as may there be propounded to you, or that you will be liable to pay the entire judgment obtained by the plaintiff against the said defendant.

Witness my hand and official signature this 8″ day of July 1907.

J. W. MASON,
Sheriff of Union County, Iowa.

Questions to be Answered by Garnishee.

1st. Are you in any manner indebted to the defendant in this suit or do you owe —— —— money or property which is not yet due? If so, state the particulars.

Answer. ——.

2nd. Have you in your possession or under your control, any property, rights or credits of said defendant? If so, state what is the value of the same, and state all particulars.

Answer. ——.

3d. Do you know any debts owing to said defendant, whether due or not due; or any property, rights or credits belonging to —— —— and now in the possession or under the control of others? If so, state the particulars.

Answer. ——.

Subscribed and sworn to by said —— —— before me
77 —— —, 190–.

—— ——, *Sheriff.*

Ex. 5.

STATE OF IOWA,
Union County, ss:

I hereby certify and return that the within notice came into my hands for service on the 8″ day of July 1907, and that on the 8th day of July 1907, I personally served the same upon the within named Thornton residence, employee of the Chicago, Burlington & Quincy Railroad at 3:00 P. M. July 8-1907 by reading the said notice t- him and delivering a copy of the same to him.

J. V. MASON, *Sheriff*,
By J. O. EVANS,
Dep'ty Sheriff.

Fees.

Service	$2.00
Mileage	$ .10
Copy	$ .30
	$2.40

Thornton demanded his fee $1.35 which was paid by plaintiff'-attorney W. J. Locke.

Endorsed: Notice to Garnishee. B. N. Torrey vs. Chicago, Burlington & Quincy R. R. Co. Gar. W. H. Hall. Filed July 9, 1907. Clarence McConnell, Clerk. Sheriff's Fees. Service, $——. Mileage, $——. Copy, $——. Total, $——.

Transcript of Judgment.

STATE OF IOWA,
Union County, ss:

Be it remembered, That at a term of the Dist. Court, within and for the County and State aforesaid, begun and holden at the Court House in the City of Creston: On the 27″ day of August 1907 Hon. H. M. Towner Sole Judge of Third *Jud.* Judicial District
78 of said State, presiding. On the 2″ day of said Term, it being the 27 day of August A. D. 1907, among other-, the following proceedings were had, done and entered of record, to-wit:

B. N. TORREY
vs.
C., B. & Q. R. R. Co., Gar.

And now on this 27″ day of August, noted above, the same being a regular judicial day of the said August term of said Court, this cause coming on for hearing, and the court having fully inspected the same, the following proceedings were had and entered of record:

Default on personal service, judgment ordered against the Chicago, Burlington & Quincy Railroad Co. as Garnishee of W. H. Hall, for the sum of $39.26, together with the costs of this action amounting to $17.65 and same is entered accordingly.

Ex. 5.

Judgment Docket, Union County, Iowa.

Judgment against.	Date of judgment. Month.	Day.	Year.	Amount of judgment.	Attorney's fees.
Chicago, Burlington & Quincy Railroad Co.	Aug.	27	1907	39.26	

Judgment in favor of B. N. Torrey.

Amount of costs.	Accrued costs.	Rate of interest.
17.65		

Ex. 5.

STATE OF IOWA,
Union County, ss:

I Clarence McConnell, Clerk of the District Court, within and for the County and State aforesaid, do hereby certify the foregoing to be a full, true, correct and complete copy of the Entry of
79 Record and Judgment, and Judgment Docket Entry, in the above entitled cause, as rendered by said District Court, at the August Term, A. D., 1907, as full, true, correct and complete, as the same remains of record in my office.

In testimony whereof I hereunto set my hand and affixed the seal of said District Court, at my office in Creston, Iowa, this 17" day of March A. D., 1908.

[SEAL]. CLARENCE McCONNELL,
Clerk of said Court.

Endorsed: Transcript of Judgment. B. N. Torrey vs. Chicago, Burlington & Quincy Railroad Co., State of Iowa, —— County, ss. Filed in my office, —— —, 19—, at — o'clock — M. —— ——, Clerk —— Court.

Certificate of Attestation.

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell, Clerk of the District Court, in and for said County, in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy of Transcript of Judgment, J. P. Execution, Notice to Garnishee and Transcript of Judgment, of Dist. Court, in the case entitled B. N. Torrey vs. W. H. Hall, and C., B. & Q. Railroad Co. Garnishee as the same appears

on file in my office. Notice to Def't Garnishee. Motion to set aside Default & dismiss garnishee, not found among files.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Creston this 23" day of March 1908.

[SEAL.] CLARENCE McCONNELL, *Clerk.*

STATE OF IOWA,
Union County, ss:

I, H. M. Towner, one of the Judges of the 3rd Judicial
80 District of Iowa, do hereby certify that Clarence McConnell, whose name is subscribed to the foregoing Certificate of Attestation, now is and was at the time of signing and sealing the same, Clerk of the District Court in and for Union County, Iowa, duly elected and qualified to office; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere; and that his attestation is in due form of law and by proper officer.

Given under my hand this 23" day of March A. D. 1908.

H. M. TOWNER,
Judge 3rd Judicial District of Iowa.

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell, Clerk of the District Court in and for said County, in the state aforesaid, do hereby certify that Hon. H. M. Towner whose genuine signature appears to the foregoing Certificate was at the time of signing the same Judge of the 3rd Judicial District of Iowa, duly commissioned and qualified; that full faith and credit are, and of right ought to be given to all his official act as such in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Creston, Iowa, this 23" day of March A. D. 1908.

[SEAL]. CLARENCE McCONNELL,
Clerk District Court.

Ex. 5.

Endorsed: Certificate of Attestation. In District Court Union County, Ia. Filed —— — 190–. —— ——, Clerk of District Court.

81 Ex. 6.

Copy.

Office of N. Skinner, Justice of the Peace and Notary Pulic, Room No. 1, Devoe Block.

Ex. A.

Statement.

CRESTON, IOWA, *July* 29, 1907.

Mr. W. H. Hall to Dr. J. A. Rawls, 106 West Montgomery St., Dr.

For Medical services Rendered you about Sept. first to Oct. first 1901 ..... $40.00

Endorsed: Filed July 29, 1907.

Ex. 6.

Petition.

J. A. RAWLS, Plaintiff,
vs.
W. H. HALL, Defendant.

Before N. Skinner, Justice of the Peace in and for Union County, Creston Township, Iowa.

Count 1.

Plaintiff states that he is now and for the last -en years has been a regularly licenced and practicing physician, under and by virtue of the laws of the State of Iowa, and has been practicing his profession of medicine in Union County, Iowa, during all of said time.

Count 2.

The plaintiff claims of and from the defendant the sum of $52.50 and for cause of action states that on Sept. 1, 1901 and during the time intervening between that time and up to and including the 12th day of Oct. 1901 this plaintiff at the instance and request of defendant rendered the said defendant certain professional
82 services of the value of $40.00 a bill of items of which is hereto annexed and made a part of this petition and is marked exhibit "A."

Count. 3.

That said services so rendered, as aforesaid in Count 2 *was* well and reasonably worth the prices set opposite each article, as appears in said exhibit "A" herein referred to, and that said services amount in the aggregate to the sum of $40.00, which is now due and unpaid by defendant.

Count 4.

That said account as above set out in exhibit "A" draws interest at the rate of 6 per cent as allowed by law and plaintiff states that there is now due him on said account as interest on same the sum of $12.50 no part of which has been paid.

Count 5.

Plaintiff also states that for the last four years past this defendant has been a non-resident of the State of Iowa, that personal service of a notice of suit could not be had on defendant within the State of Iowa and that this cause of action is not barred by statute of limitations as provided by law, that the cause of action hereto sued upon is an Iowa contract and is to be construed under the laws of the State of Iowa.

Wherefore plaintiff claims of and from the defendant on all the above Counts judgment for the sum of $52.50 and for the costs of this action.

WALTER J. LOCKE,
Att'y for Pl'ff.

STATE OF IOWA,
Union County, ss:

I, J. A. Rawls, being first duly sworn on oath state that I am the plaintiff in the above cause of action, that I have read the statements and allegations of this, my foregoing petition and
83 have examined the bill of items hereto annexed and that the statements and allegations and bill of items attached to the petition are true as I verily believe.

J. A. RAWLS.

Subscribed and sworn to before me and in my presence by the above named J. A. Rawls this 29th day of July 1907.

[NOTARIAL SEAL.] WALTER J. LOCKE,
Notary Public in and for Union Co.

Endorsed: Copy. Petition. Filed July 29, 1907.

Copy.

Justice Notice No. 5.

To W. H. Hall.

SIR: You are hereby notified that J. A. Rawls claims of you forty Dollars, and — Cents justly due Plaintiff on account for professional services rendered you at your instance and request and used by you in your family together with interest on said account as provided in law and unless you appear at the office of N. Skinner a Justice of the Peace in and for Creston Township, Union County, Iowa, on the 29" day of July A. D., 1907, at 9 o'clock A. M., and

make defence to said claim judgment will be rendered against you for the full amount, with interest and costs.

Given under my hand at Creston Iowa this 20" day of July A. D., 1907.

N. SKINNER,
Justice of the Peace.

Copy.

STATE OF IOWA,
Union County, ss:

84 I hereby certify and return that the within came into my hands for service on the 20" day of July 1907, and that on the 20" day of July 1907 I personally served the same upon the within named William Hall by reading said notice to William Hall in his presence & hearing & giving him a true copy of the same. All done in Creston township, Union County, Iowa.

R. CAMPBELL, *Constable.*

Constable's Fees:

Service	$ .50
Mileage	.10
Copy	.10
	$ .70

Endorsed: Copy. Justice Notice. No. 425. J. A. Rawls vs. W. H. Hall. Filed July 22, 1907. N. Skinner, J. P.

Copy.

Execution No. 4.

STATE OF IOWA,
Union County, ss:

To Robert Campbell, Constable of said County:

Whereas, on the 29" day of July A. D. 1907 J. A. Rawls obtained a judgement against W. H. Hall before me N. Skinner a Justice of the Peace of Creston Township, for the sum of Fifty two & 50/100 Dollars, damages, and Two & 20/100 Dollars, cost, with interest from the 29" day of July A. D. 1907, until paid.

You are therefore commanded to collect the amount of said judgement, with cost, increase costs and interest, out of the personal property of said W. H. Hall and pay the sum to the party entitled thereto, and make legal service and due return of this Execution, and a certificate thereon, showing the manner in which you have executed the same, within thirty days from the time of your receipt hereon.

Given under my hand this 29" day of July A. D. 1907.

N. SKINNER,
Justice of the Peace.

85 Copy.

I hereby certify & return that the within writ came into my hands for execution on the 29″ day of July 1907 and that on the 29″ day of July 1907 I served the same by attaching the Chicago Burlington & Quincy Rail Road Company as garnishee in Creston township Union County Iowa.

R. CAMPBELL,
Constable.

Constable's Fees:

Service	$.50
Mileage	.10
Poundage	
	$.60

Endorsed: Copy. No. 425. Doc. 4, Page 425. Execution. J. A. Rawls, Plaintiff, vs. W. H. Hall, Defendant. This Writ Dated July 29″, 1907. Damages $52.50. Plaintiff's Costs, $2.20. Defendant's Costs, —. Increase Costs, —. Interest, —. Amount, —. Received July 29, 1907. R. Campbell, Constable. N. Skinner, Justice of the Peace.

Copy.

Garnishee Notice.

STATE OF IOWA,
Union County, ss:

To the Chicago, Burlington & Quincy Railroad Company.

SIR: You are hereby notified that you are attached as Garnishee by virtue of a writ of Execution issued by N. Skinner Justice of the Peace in and for the County and State aforesaid in a cause wherein J. A. Rawls is Plaintiff and W. H. Hall is Defendant.

You are hereby notified and required not to pay any debt due by you to the said Defendant W. H. Hall or hereafter to become
86 due from you to said Defendant. And you must retain possession of all property of said Defendant now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law.

You are also notified and required to be and appear at the office of N. Skinner a Justice of the Peace in and for Creston Township, Union County State of Iowa, on the 3 day of August, A. D., 1907, at 9 o'clock, A. M. and answer such interrogations as may then be propounded to you, or you shall be liable to pay the entire judgment, which the said plaintiff shall obtain against the defendant.

July 29, 1907.

R. CAMPBELL,
Constable.

Copy.

STATE OF IOWA,
Union County, ss:

I hereby certify and return that the within came into my hands for service on the 29" day of July 1907, and that on the 29 day of July 1907 I personally served the same upon the within named Chicago Burlington & Quincy Rail Road Company by personally delivering to A. L. Thornton Clerk for said Rail Road Comaccepted service of said Chicago Burlington & Quincy Rail Road Company reading the same to him in —— County, Iowa, and delivering him a true copy on the 29 day of July 1907. All done in Creston township Union County Iowa.

R. CAMPBELL,
Constable.

Constable Fees:

Service	$.50
Mileage	.10
Copy	.10
	$.70

Appearance fee 60 cts. Paid by W. J. Locke.

87 Copy.

Garnishee Notice to Defendant.

STATE OF IOWA,
Union County:

To W. H. Hall:

You are hereby notified that the Chicago Burlington & Quincy Rail Road Company has been attached as garnishee, by virtue of a writ of execution issued by N. Skinner Justice of the Peace in and for the County and State aforesaid in a cause wherein J. A. Rawls is Plaintiff and yourself *is* defendant.

You are also notified that said Chicago Burlington & Quincy Rail-Road Company as garnishee, has answered in the above entitled cause, stating it owes you the sum of $111.12 *dollars* subject to a previous garnishment from the District Court of Union County Iowa. And that unless you appear on the 10" day of August 1907 at 9 o'clock A. M. and show cause why Judgment should not be rendered against it as being indebted to you. Judgment will be rendered against it for the amount found to be due you by it.

Dated at Creston Iowa this 2 day of August 1907.

N. SKINNER,
Justice of the Peace.

Endorsed: Copy. Garnishee Notice to Defendant. J. A. Rawls vs. W. H. Hall. Received at Sheriff's Office Aug. 3, 1907. Douglas County, Nebraska.

Copy.

STATE OF NEBRASKA,
Douglas County, ss:

Henry Peterson a duly appointed qualified and acting Deputy Sheriff, in and for Douglas County, Nebraska, being first duly sworn deposes and says that the within notice came into my hands
88 for service on the 3" day of August A. D. 1907 and thereafter on the 3" day of August 1907 I served the same on the within named W. H. Hall at 2:15 P. M. by reading to him and delivering to him personally in Douglas County, Nebraska a true and duly certified copy of the within notice with all the endorsements thereon.

HENRY PETERSON.

Fees:

Mileage / Affidavit } $1.50. Paid by N. Skinner 8/3/07.

Subscribed in my presence and sworn to before me this 3rd day of August A. D. 1907.

[NOTARIAL SEAL.] ASEL STEERE, JR.,
Notary Public.

Transcript.

Civil. No. 114.

J. A. RAWLS, Plaintiff,
vs.
W. H. HALL, Defendant.

Before N. Skinner, Justice of the Peace in and for Creston Township, in Union County, Iowa.

Be it remembered, that on the 20 day of July A. D. 1907 said Plaintiff, J. A. Rawls filed herein as his claim and cause of action against the Defendant W. H. Hall an account claiming of said Defendant Forty dollars Justly due for professional services
89 rendered Defendants family. Plaintiff also demands interest on said account as provided by law, thereupon I issue an original notice to the said Defendant W. H. Hall returnable before me at my office in said township, on the 29" day of July A. D. 1907 at 9 o'clock A. M., and delivered the same to Robert Campbell, Constable for service, who returned said notice with his return thereon, from which it appears that he received said notice for service on the 20" day of July A. D. 1907, and that he did, on the 20" day of July 1907 serve the same on the said defendant, in the manner required by law, in Creston Township, in said County of Union and State of Iowa.

And now, on this 29 day of July 1907, this cause coming on for hearing, I wait one hour after time set for trial, Defendant appears

not nor any person for him but makes default. Plaintiff appears and files verified petition claiming of said Defendant $52.50 for services and interest on same from April 1902 and prays Judgment for said amount against Defendant.

The court being fully advised in the premises, it is therefore ordered and adjudged by the court, that the Plaintiff have and recover of the Defendant, W. H. Hall judgment for the sum of Fifty two and 50/100 Dollars with 6 per cent. interest per annum from date, together with the costs of this action, taxed at Two and 20/100 dollars and that execution issue therefor.

N. SKINNER,
Justice of the Peace.

Execution issued this 25" day of July 1907 and delivered to Robert Campbell constable for service. Execution returned showing it had been served by attaching, as garnishee The Chicago Burlington & Quincy Rail Road Company.

N. SKINNER,
Justice of the Peace.

Appeal Bond approved and filed this — day of ——, 190–.

90 Transcript and all other papers in this suit filed in the office of Clerk of the — Court, this — day of ——, 190–.

—— ——,
Justice of the Peace.

STATE OF IOWA,
Union County, ss:

I, N. Skinner Justice of the Peace of Creston Township, Union County, State of Iowa, do hereby certify, That the within and foregoing is a true and perfect transcript from my docket in the cause of J. A. Rawls against W. H. Hall as fully as the same remains on file and of record in my office.

In witness whereof, I have hereunto set my hand this 21 day of March A. D. 1908.

N. SKINNER,
Justice of the Peace.

Bill of Costs.

Justice's Fees (—— ——, J. P.).

Docketing	$
Notice	
Trial	
Judgment	
Execution	
Continuance	

Constable's Fees (—— ——, Constable).

Serving Notice	$
Serving Execution	

Witness Fees.

..... $———

———

Total ..... $

91 STATE OF IOWA,
—— *County, ss:*

I, —— ——, Justice of the Peace, do hereby certify that the foregoing is a full, true and correct bill of the costs accured in this case, and that the same has been fully paid by —— ——, the —— therein.

Witness my hand this — day of ——, 190–.

———— ————,
Justice of the Peace.

Endorsed: Civil. No. —. —— —— vs. —— ——. Transcript from Docket of —— ——, J. P. Filed in my office —— —, 190–. —— ——, Clerk —— Court.

STATE OF IOWA,
Union County, ss:

I, N. Skinner Justice of the Peace of Creston Township Union County Iowa do here certify that the within and foregoing is a true and perfect transcript of my docket in the cause of J. A. Rawls against W. H. Hall as fully as the same remains on file and of record in my office. Also that the record of judgment against the garnishee the Chicago Burlington and Quincy Rail Road Company hereto attached is a true copy of the record therein that the annexed copies of the original notice in the main case and the returns of the office thereon and of the notice of garnishment and notice to the garnishee and the respective returns thereon are true perfect and complete copies of the notices and returns in said cause and garnishment and a true copy of writ upon which garnishment was made is also attached. In witness whereof I have hereunto set my hand and seal this 21" day of March 1908.

N. SKINNER,
Justice of the Peace.

92 STATE OF IOWA,
Union County:

J. A. RAWLS
vs.
THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Garnishee at the Suit of

J. A. RAWLS
vs.
W. H. HALL.

Before N. Skinner, Justice of the Peace in and for Creston Township, Union County, Iowa.

Transcript, Proceedings in Garnishment.

Be it remembered that on the 29 day of July 1907 Robert Campbell Constable, by virtue of an execution issued by N. Skinner Justice of the Peace attached the Chicago, Burlington & Quincy Rail Road Company as garnishee in the above entitled cause citing it to appear and make answer before the aforesaid N. Skinner J. P. at his office in Creston township Union County Iowa at 9 o'clock A. M. on the 3 day of August 1907. And now on this 2" day of August 1907 the Chicago, Burlington and Quincy Rail Road Company, garnishee, by A. L. Thornton agent, appears and makes answer in the above entitled cause, which answer was duly reduced to writing subscribed & sworn to by the said A. L. Thornton, agent for the said garnishee, from which it appears that the garnishee is indebted to the Defendant W. H. Hall in the sum of $111.12/100 subject to a previous garnishment from the District Court of Union County Iowa in case of B. N. Torey vs. W. H. Hall.

Thereupon I issued garnishment notice to the Defendant W. H. Hall notifying him of the garnishment of the Chicago, Burlington & Quincy Rail Road Company and the fact that it had answered before me N. Skinner Justice of the Peace stating that it owed Defendant W. H. Hall the sum of $111.12 subject to a previous garnishment and citing Defendant to appear before me N. Skinner J. P. on the 10" day of August 1907 at 9 o'clock A. M. and delivered the same to John W. McDonald sheriff of Douglas County Nebraska for service. Said garnishment notice returned showing that
93 same was served on the Defendant W. H. Hall in Douglas County Nebraska on the 3" day of August 1907 by Henry Peterson a duly authorized deputy sheriff of Douglas County Nebraska.

And now on this 10" day of August 1907 I wait one hour after the time set for the appearance of the Defendant W. H. Hall as per notice served upon him by Henry Peterson Deputy Sheriff, Defendant appears not but makes default, and the court being fully advised in the premises it is therefore ordered and adjudged by the court

that the Plaintiff J. A. Rawls have and recover of the Chicago, Burlington & Quincy Rail Road Company garnishee, Judgment for $61.60 on its answer of $111.12 and this judgment is made subject to a former garnishment of said Rail Road Company in the case of B. N. Torey vs. W. H. Hall in the District Court of Union County Iowa. And said Rail Road Company garnishee is required to pay into this court the sum of $61.60 or so much thereof as shall remain in its hands, as garnishee, after first paying garnishment of Torey vs. Hall in full, and Plaintiff is to have Judgment against said Rail Road Company as above shown and that execution issue against said Rail Road Company for any amount remaining in the hands of said Company not to exceed $61.60 after garnishment Tory vs. Hall is satisfied.

N. SKINNER, *J. P.*

STATE OF IOWA,
Union County:

I, N. Skinner Justice of the Peace of Creston township Union County state of Iowa Do Hereby certify that the within and foregoing is a true and perfect Transcript from my Docket in the cause of J. A. Rawls vs. The Chicago, Burlington & Quincy Rail Road Company, garnishee at the suit of J. A. Rawls vs. W. H. Hall as fully as the same remains on file and of record in my office.

94 In Witness Whereof I have hereunto set my hand this 21 day of March 1908.

N. SKINNER,
Justice of the Peace.

Certificate of Acknowledgment.

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell Clerk of the District Court in and for said county, do hereby certify that N. Skinner before whom the foregoing instrument of writing was proven or acknowledged, was at that time and now is an acting and qualified Justice of the Peace in and for said county and is duly authorized to take acknowledgments, and I verily believe the name N. Skinner subscribed thereto, to be his genuine signature and that all his official acts as such are entitled to full faith and credit, and that the same is executed and acknowledged according to the Laws of the State of Iowa.

Witness my hand and the Seal of the District Court of Union County, Iowa, this 23" day of March 1908.

[SEAL.] CLARENCE McCONNELL,
Clerk of the District Court.

Certificate of Attestation.

STATE OF IOWA,
—— *County, ss:*

I, —— ——, Clerk of the District Court, in and for said County, in the State aforesaid, do hereby certify the foregoing to be a true,

perfect and complete copy of — as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in — this — day of —— 190–.

95 —— ——, *Clerk.*

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell, one of the Judges of the 3rd Judicial District of Iowa, do hereby certify that H. M. Towner whose name is subscribed to the foregoing Certificate of Attestation, now is and was at the time of signing and sealing the same, Clerk of the District Court in and for Union County, Iowa, duly elected and qualified to office; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere; and that his attestation is in due form of law and by proper officer.

Given under my hand this 23 day of March A. D. 1908.

H. M. TOWNER,
Judge 3rd Judicial District of Iowa.

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell Clerk of the District Court in and for said County, in the state aforesaid, do hereby certify that Hon. H. M. Towner whose genuine signature appears to the foregoing Certificate was at the time of signing the same Judge of the 3rd Judicial District of Iowa, duly commissioned and qualified; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Creston, Iowa, this 23 day of March A. D. 1908.

96 [SEAL.] CLARENCE McCONNELL,
Clerk District Court.

Endorsed: Certificate of Attestation. In District Court Union County, Ia. Filed —— — 190–. ——, Clerk District Court.

Ex. 7.

In the District Court of the United States for the District of Nebraska.

In the Matter of WILLIAM H. HALL, Bankrupt, of Douglas County, Nebraska.

To the Honorable William H. Munger, Judge of the District Court of the United States for the District of Nebraska:

Now comes William H. Hall, by his attorney, J. O. Detweiler, and respectfully shows to the court that he filed his voluntary peti-

tion in bankruptcy herein on the 3th day of August, 1907, and was duly adjudicated a bankrupt by this Honorable Court on the 7th day of August 1907, upon the allegations and statements therein contained, all of which your petitioner alleges is true, both in law and in fact and the same is herein referred to and made a
97 part of this application. That at the time of the filing of said petition and for more than 4 months prior thereto he was insolvent. That at said time there was due and owing to him from the Chicago, Burlington & Quincy Railway Company and the Chicago, Burlington & Quincy Railroad Company, a corporation having one of its principal places of business in the City of Omaha, Douglas County, Nebraska, the sum of $187.00 for wages earned by this petitioner in the service of said company at and within the City of Omaha, Nebraska, in the capacity of switchman during the months of June and July 1907 and all of said moneys being for services rendered within sixty days immediately prior to the filing of said petition in bankruptcy. That said corporation has now in its hands in the City of Omaha, Douglas County, Nebraska, moneys due as such wages and owing to this petitioner for services as aforesaid the sum of about $122.40 which they claim to hold because of garnishment proceedings as set forth in said bankruptcy petition in claims therein listed, had within four months prior to the filing thereof, which should be considered and disposed of in the bankruptcy proceedings in this cause.

That the first meeting of creditors was duly advertised and held before the Honorable J. A. C. Kennedy, referee in said bankruptcy proceedings on the 2nd day of March 1908, and due notice thereof was given to said creditors on said claims so garnished but no creditors appeared therein to contest the orders of the said referee made in said cause at said time and said referee is now ready to make final disposition of the said case. That at said meeting no trustee of said bankruptcy proceedings was appointed, there being no estate to administer, the same not being required under the provisions of law in said case made and provided.

That in order to have the said bankruptcy estate fully administered upon in said bankruptcy proceedings it is necessary that the said debtor of said estate, Chicago, Burlington & Quincy Rail-
98 way Company, and Chicago, Burlington & *Chicago* Railroad Company, should pay the moneys now in its hands into Court herein to abide the further order of this Court.

Wherefore your petitioner would respectfully pray that the court *to* order said debtor, the Chicago, Burlington & Quincy Railway Company, & The Chicago, Burlington & Quincy Railroad Company *to* pay into Court to abide its further order in said bankruptcy proceedings the moneys now held by it as assets of said estate as represented in the voluntary petition now herein on file.

WILLIAM H. HALL, *Bankrupt*,
By J. O. DETWEILER, *His Att'y*.

OMAHA, NEBRASKA, *March 3rd*, 1908.

To the Chicago, Burlington & Quincy Railway Company:

You are hereby notified that on Saturday, the 7th day of March, 1908, before his Honor, Judge William H. Munger, of the United States District Court in and for the District of Nebraska at the hour of 10 o'clock A. M. I will call for hearing the above application for order of court on you to pay moneys now in your hands due and owing to the said William H. Hall for services as in said application alleged and you are hereby notified to appear at said time and make any objections to the granting of said order that to you may seem just and legal.

J. O. DETWEILER,
Attorney for Petitioner.

OMAHA, NEBRASKA, *March 3rd*, 1908.

We, the said Chicago, Burlington & Quincy Railway Company, The Chicago, Burlington & Quincy Railroad Company, hereby acknowledge due service of notice of hearing of said application of payment of moneys into court together with a copy of said application thereto attached.

99

JAMES E. KELBY,
Gen'l Sol. for R. R. Co.

Endorsed: Filed at 3:30 P. M. Mar. 3, 1908. R. C. Hoyt, Clerk.

In the District Court of the United States for the District of Nebraska.

In the Matter of WILLIAM H. HALL, Bankrupt.

Answer of the Chicago, Burlington & Quincy Railway Company and the Chicago, Burlington & Quincy Railroad Company to the Petition of William H. Hall.

The respondent, the Chicago, Burlington and Quincy Railroad Company, and Chicago, Burlington & Quincy Railway Company, for answer to said petition states:

1. It denies that at the time said Hall was adjudged a bankrupt by this court that there was due and owing him from these respondents the sum of $187.00, but alleges that at said date these respondents were indebted to said Hall in the sum of $122.40, subject to the defenses hereinafter set out.

2. That long prior to the time said Hall was adjudged a bankrupt one B. N. Torry had recovered a judgment against said Hall in the District Court of Union County, Iowa, in the sum of $56.91, and interest thereon, the exact amount of which is unknown to this respondent, and on or about the 9th day of July 1907, said Torry had caused an execution to be issued on said judgment and the said respondents were garnished on said execution as a debtor of the said Hall and notified to appear and answer thereto under the laws of the State of Iowa in said court on the 26th day of August 1907. That

said execution was served and this respondent garnished
100 thereunder, as above alleged, before said Hall was declared a bankrupt. That this respondent appeared and made answer in said proceeding showing that it was indebted to the said Hall in the said sum of $122.40. That judgment was rendered therein against this respondent Aug. 29, 1907, for $56.91 debt and costs with interest. That at the time said execution was served and this respondent garnished thereunder the respondent had a line of railroad through Union County, Iowa, and an office therein, and was and is subject to the jurisdiction of said court.

3. That a short time before said Hall was adjudged a bankrupt by this court, an action was begun against him by one J. A. Rawls, in the Justice Court of Union County, Iowa, and writ of attachment issued out of said court in said action and these respondents were garnished thereunder as a debtor of the said Hall, and at the time said attachment writ was served and this respondent garnished thereunder this respondent had a line of railroad through Union County, Iowa, and an office therein, and was and is subject to the jurisdiction of said court. That on the 10th day of August 1907 a judgment was rendered against these respondents by the said court in favor of the said J. A. Rawls for the sum of $61.60 and said judgment is still unsatisfied and in force and effect as against this respondent.

4. This respondent has neither knowledge nor information sufficient to form a belief as to whether or not the causes of action against said Hall sued upon by said Torry and said Rawls above referred to, were debts which were discharged and released by the discharge in bankruptcy of the said Hall.

Wherefore, the respondents, the Chicago, Burlington and Quincy Railroad Company, and Chicago, Burlington and Quincy Railway Company pray:

(1) That the petition of the said William H. Hall be dismissed; or

101 (2) That this court enter such an order and issue such process as may be necessary to make said B. N. Torry and J. A. Rawls parties to this proceeding and obtain personal jurisdiction of them so that any order or judgment which may be entered herein will conclude and bind them; and

(3) That if this respondent is ordered to pay said fund into this court that this court enter an order enjoining and staying any further proceedings in execution of the judgments obtained or to be obtained in the said garnishment proceedings above referred to against this respondent, and for such other and further relief as may be equitable in the premises.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY AND CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
By ARTHUR R. WELLS, *Its Attorney.*

JAMES E. KELBY,
General Solicitor, of Counsel.

Endorsed: Filed at 10:00 A. M. Mar. 7 1908, R. C. Hoyt, Clerk.

In the District Court of the United States within and for the District of Nebraska.

No. 1357.

In the Matter of WILLIAM H. HALL, Bankrupt.

Memorandum Opinion.

W. H MUNGER, *D. J.*:

The facts in this case show that on the 6th day of August, 1907, the said William H. Hall filed his petition in voluntary bankruptcy in this court, and on the following day was adjudged a bankrupt. The only assets scheduled were such as were under the laws of the state of Nebraska exempt. Such being the case, and there being no assets which could be administered by the bankrupt court,
102 no trustee was appointed. Among the petitioner's assets was the sum of $187.00 due him as wages earned within sixty days prior to the filing of his petition in bankruptcy, said sum being owing to him by the Chicago, Burlington & Quincy Railroad Company. He has now filed his petition, asking for an order of this court requiring said Chicago, Burlington & Quincy Railroad Company to pay over said sum of money. The Company answer and say that, while they were owing him said sum at the time of the filing of his petition, the amount thereof had been garnisheed in the courts of Iowa in suits brought by the creditors of said bankrupt against him prior to the filing of his petition in bankruptcy. It is further said that the claims upon which said suits were based are for medical services and attendence rendered to petitioner's daughter, and the Company present the query as to whether a discharge in bankruptcy would operate to discharge petitioner from such debts, under the provisions of Section 17 of the Bankrupt Law, as amended in 1903, which excepts from the operation of the discharge claims due for maintenance or support of wife or child.

From the view we take of this case, it is unnecessary for us to pass upon this question, although it is doubtful whether or not a debt for medical attendance comes within the definition of maintenance or support. In Re Ostrander, 139 Fed., 139, it was held that medical attandance did not come under the designation of maintenance or support.

However, it appears in this case that petitioner, at the time of filing his petition claimed this sum as exempt, as it clearly was, under the statute of the state. Such being the case, the title to this money would not have passed to his trustee in bankruptcy but would have remained in the bankrupt. While the bankrupt court has authority and jurisdiction to determine what property is exempt to the bankrupt, it has no authority to administer such exempt property as it does not become a part of his estate in bankruptcy.
103 It is apparent that the referee adjudicated that this property was earned within sixty days and hence exempt, as no trustee

was appointed for the reason that there was no estate of the bankrupt to be administered by the bankrupt court. The power and authority of the bankrupt court being limited to the determination that the property was exempt, and therefore that all title and interest to the same remained in the bankrupt, this court has no jurisdiction. The jurisdiction of the bankrupt court is limited to a determination of the bankrupt's claim to exemptions; that being established, it has no jurisdiction over the property claimed. Such was the holding of the Court of Appeals in this Circuit in the case of Ingram vs. Wilson, 125 Fed., 913.

For the reasons stated, that this court has no jurisdiction over the property claimed, petitioner's application for an order directing the Railroad Company to pay over the money is denied.

Endorsed: Filed at 2:30 P. M. Mar. 9 1908, R. C. Hoyt, Clerk.

UNITED STATES OF AMERICA,
District of Nebraska, Omaha Division, ss:

I, R. C. Hoyt, Clerk of the District Court of the United States for the District of Nebraska, do hereby certify that the foregoing is a true and correct copy of the original Application for order to pay into Court Certain Money, &c., Answer, and Memorandum Opinion, as the same appear of record and on file in said Court, in the Matter of William H. Hall, Bankrupt, No. 1395.

Witness my hand and seal of said Court, at Omaha, in said District, this 14th day of October, 1908.

——— ———, *Clerk.*

104 United States District Court, District of Nebraska, September, 1908, Term.

OMAHA, NEBRASKA,
MONDAY MORNING, *March* 9, 1908.

Court opened pursuant to adjournment.

Present: William H. Munger, Judge.

The following among other proceedings were had and done, to-wit:

No. 1357.

In the Matter of WILLIAM P. HALL, Bankrupt.

This cause having been heretofore duly submitted, upon an application of bankrupt for an order to pay certain money due bankrupt, now garnisheed in courts in Iowa, and by the Court taken under advisement. Now, after due consideration thereof and being fully advised in the premises, it is by the Court,

Ordered, That said application be and the same is hereby denied, for the reason that this court has no jurisdiction over the property claimed.

(Memorandum Opinion.)

UNITED STATES OF AMERICA,
District of Nebraska, Omaha Division, ss:

I, R. C. Hoyt, Clerk of the District Court of the United States for the District of Nebraska, do hereby certify the above and foregoing to be a true and correct copy of an order entered upon the Journal of the proceedings of said Court in the above entitled action as the same appears of record in my office.

Witness, my hand and the Seal of said Court, at Omaha, in said District, this 14th day of October, A. D. 1908.

——— ———, *Clerk.*
——— ———, *Deputy.*

105 Endorsed: No. 1357. United States District Court, District of Nebraska, Omaha Division. In the Matter of William H. Hall, Bankrupt. (Certified Copies.) Application for Order to Pay Certain Money into Court, Answer of C. B. & Q. Ry. Co., Memoranda Opinion, and Order of Court.

Ex. 8.

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell, Clerk of the District Court of Union County, Iowa, do hereby certify that I am the officer having custody of the records of said county which show who are and have been duly elected, qualified and acting Justices of the Peace within and for said County

I further certify that the records in my office show that N. Skinner was the duly elected, qualified and acting Justice of the Peace in and for said County during the year 1907.

I further certify that the records of my office show that J. B. Kirsch was a duly elected, qualified and acting Justice of the Peace in and for Union County, Iowa during all of the months of March and April 1894.

Witness my hand and official seal this 14 day of April 1908, at Creston, Union County, Iowa.

[SEAL.] CLARENCE McCONNELL,
Clerk of the District Court of Union County, Iowa.

STATE OF IOWA,
Union County, ss:

I, H. K. Evans, one of the Judges of the 3rd Judicial District of Iowa, do hereby certify that Clarence McConnell, whose name is subscribed to the foregoing Certificate of Attestation, now is and was at the time of signing and sealing the same, Clerk of the
106 District Court in and for Union County, Iowa, duly elected and qualified to office; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of

record and elsewhere; and that his attestation is in due form of law and by proper officer.

Given under my hand this 14th day of April A. D. 1908.

H. K. EVANS,
Judge 3rd Judicial District of Iowa.

STATE OF IOWA,
Union County, ss:

I, Clarence McConnell Clerk of the District Court in and for said County, in the state aforesaid, do hereby certify that Hon. H. K. Evans whose genuine signature appears to the foregoing Certificate was at the time of signing the same Judge of the 3rd Judicial District of Iowa, duly commissioned and qualified; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Creston, Iowa, this 14th day of April A. D. 1908.

[SEAL.] CLARENCE McCONNELL,
Clerk District Court.

Endorsed: Certification of attestation. In District Court Union County, Ia. Filed —— —, 190–. —— ——, Clerk of District Court.

OMAHA, NEBRASKA, *February 6th*, 1909.

I hereby certify that the foregoing is a true and complete transcript of all the testimony, oral and documentary offered or given by either of the parties hereto upon the trial of this cause, together with
107 all motions and objections made by either party, the rulings of the court on the same and the exceptions of the respective parties to such rulings, as shown by my shorthand notes taken on the trial of the case.

C. C. VALENTINE,
Official Stenographic Reporter in and for the Fourth Judicial District of Nebraska.

OMAHA, NEBRASKA, *March* 15, 1909.

It is hereby stipulated and agreed, by and between the parties hereto, plaintiff and defendant, that the foregoing transcript is a true and complete copy of all the evidence, oral and documentary, offered or given upon the trial of said case, by either of the parties hereto, together with all objections and motions made by either party, the rulings of the Court on same and the exceptions of the respective parties to such rulings.

J. O. DETWEILER,
Attorney for Plaintiff.
ARTHUR R. WELLS,
Attorney for Defendant.

Received from Arthur R. Wells, Esq., for examination and amendment, a draft of a Bill of Exceptions in the case of William H. Hall, Plaintiff, vs. Chicago, Burlington & Quincy Railroad Company, Defendant, tried in the District Court of Douglas County, Nebraska, at the regular October term, 1908, thereof.

J. O. DETWEILER,
Attorney for Plaintiff.

I herewith return the Bill of Exceptions in the above entitled cause, submitted to me on the 3rd day of March, 1909 and propose no amendments thereto.

108 Dated this 15 day of March 1909.

J. O. DETWEILER,
Attorney for Plaintiff.

Received the within Bill of Exceptions of J. O. Detweiler, Esq., this 15th day of March 1909.

ARTHUR R. WELLS,
Attorney for Defendant.

OMAHA, NEBRASKA, *March* 15", 1909.

I hereby certify that the within and foregoing is a full, true and complete transcript of the proceedings had upon the trial of the case of William H. Hall, plaintiff, vs. Chicago, Burlington & Quincy Railroad Company, defendant, and that the same contains all of the evidence offered or given by either party upon the trial of said case, and likewise contains all objections and motions relating to such evidence made by either party to said cause, the rulings of the Court upon such objections and motions, and the exceptions of the respective parties to such rulings.

I further certify that said trial was had at the time and place hereinafter set forth, and that upon the application of the defendant, Chicago, Burlington & Quincy Railroad Company, this Bill of Exceptions is allowed by me, and ordered made a part of the record in said cause.

A. C. TROUP,
Judge of the District Court of the Fourth Judicial District of Nebraska.

STATE OF NEBRASKA,
Douglas County, ss:

I, Robert Smith, Clerk of the District Court, Fourth Judicial District of the State of Nebraska, in and for said County, do
109 hereby certify that this is the original Bill of Exceptions filed in my office in the cause in said Court, wherein William H. Hall is Plaintiff and C. B. & Q. R. R. Co. Defendant.

Witness my signature and official seal this 16th day of April 1909.

[SEAL.]

ROBT. SMITH, *Clerk,*
By A. T. GOW, *Deputy.*

Endorsed: 16213. Hall v. C. B. & Q. R. Co. Bill of Exceptions. Supreme Court of Nebraska. Filed May 27 1909. H. C. Lindsay Clerk.

110 And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Præcipe, in the words and figures following, to-wit:

Præcipe on Appeal.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Appellant.

The appellant, Chicago, Burlington and Quincy Railroad Company, complains of the appellee, William H. Hall, that on December 7th, 1908 William H. Hall, as plaintiff, recovered a judgment against Chicago, Burlington and Quincy Railroad Company, as defendant, in the District Court of Douglas County, Nebraska, for the sum of $132.50 with interest, and costs, in an action then pending in said court; that subsequently a motion for a new trial was filed which said motion was overruled on the 12th. day of December, 1908.

The Clerk of this Court is requested to issue notice of appeal designating Chicago, Burlington and Quincy Railroad Company as appellant and William H. Hall, as appellee.

The appellant prays that the judgment rendered in said action be reversed.

JAMES E. KELBY,
ARTHUR R. WELLS.
Attorney for Appellant.

Endorsed: 16213. Hall v. C., B. & Q. Præcipe. Supreme Court of Nebraska. Filed May 27 1909. H. C. Lindsay, Clerk.

111 And on the same day there was made to issue out of the office of the Clerk of said Supreme Court a certain Notice of Appeal in the words and figures following, to-wit:

Notice of Appeal.

THE STATE OF NEBRASKA, ss:

To the Sheriff of the County — Douglas: You are hereby commanded to notify William H. Hall That an appeal has been taken to the Supreme Court of the State of Nebraska by Chicago, Burlington & Quincy Railroad Company asking the reversal of a judgment against it rendered on the 7 day of December A. D. 1908 in a certain cause in the District Court of Douglas County, wherein William H. Hall was Plaintiff and Chicago, Burlington & Quincy R. Co. was Defendant.

You will make due return of this notice, on or before thirty days after the date hereof.

Witness my hand and the Seal of said Court, at the City of Lincoln, this 27 day of May, 1909.

[SEAL.]

H. C. LINDSAY, *Clerk*,
By VICTOR SEYMOUR, *Deputy*.

Endorsed: General No. 16213. Supreme Court State of Nebraska. Hall v. C. B. & Q. R. Co. Notice of Appeal. September 27, 1909 fixed as Rule Day, as provided for under Rule Nine. H. C. Lindsay, Clerk.

And afterwards, to-wit, on the 2d day of June, 1909, said Notice of Appeal theretofore issued out of the office of the Clerk of said Supreme Court was Returned and filed in the office of said Clerk with service endorsed thereon in the words and figures following, to-wit:

112 Service of the within Notice of Appeal acknowledged this 29th day of May, 1909.

WILLIAM H. HALL, *Appellee,*
By J. O. DETWEILER, *Attorney.*

Supreme Court of Nebraska. Filed June 2 1909. H. C. Lindsay, Clerk.

And afterwards, to-wit, on the 24th day of September, 1909, there was filed in the office of the Clerk of said Supreme Court a certain Stipulation, in the words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Appellant.

Stipulation.

It is hereby stipulated and agreed between the parties that the Appellant shall have until November 27th, 1909 in which to file its brief in the above entitled action.

J. O. DETWEILER,
Attorney for Appellee.
JAMES E. KELBY,
ARTHUR R. WELLS,
Attorneys for Appellant.

Endorsed: 16213. Hall v. C. B. & Q. Stipulation. Supreme Court of Nebraska. Filed Sep. 24 1909. H. C. Lindsay, Clerk.

113 And on the same day there was rendered by said Supreme Court and entered of record upon the Journal thereof a certain Order in the words and figures following, to-wit:

Supreme Court of Nebraska, September Term, A. D. 1909.

No. 16213.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, B. & Q. R. Co., Appellant.

Appeal from the District Court of Douglas County.

SEPT. 24.

This cause coming on to be heard upon stipulation of parties in re briefs, was submitted to the court; upon due consideration whereof, it is by the court ordered that said stipulation be, and the same hereby is, allowed, and appellant given until November 27, 1909 to serve briefs herein.

M. B. REESE,
Chief Justice.

And afterwards, to-wit, on the 26th day of October, 1910, there was filed in the office of the Clerk of said Supreme Court a certain Request for Oral Argument, in the words and figures following, to-wit:

16213. Hall v. C. B. & Q. R. Co. Request of appellant for oral argument. Supreme Court of Nebraska. Filed Oct. 26 1910. H. C. Lindsay, Clerk.

And afterwards, to-wit, on the 10th day of November, 1910, the following among other proceedings were had and done in said Supreme Court, to-wit:

114 Supreme Court of Nebraska, September Term, A. D. 1910.

Nov. 10.

The following causes were argued by counsel and submitted to the Court:

* * * * * * *

16213. Hall v. Chicago, B. & Q. R. Co. Appeal. Douglas.

M. B. REESE,
Chief Justice.

And afterwards, to-wit, on the 26th day of November, 1910, there was rendered by said Court and entered of record upon the Journal thereof a certain Judgment in the words and figures following, to-wit:

Supreme Court of Nebraska, September Term, A. D. 1910.

No. 16213.

WILLIAM H. HALL, Appellee,
v.
CHICAGO, B. & Q. R. Co., Appellant.

Appeal from the District Court of Douglas County.

Nov. 26.

This cause coming on to be heard upon appeal from the district court of Douglas county, was argued by counsel and submitted to the court; upon the consideration whereof, the court doth find no error apparent in the record of the proceedings and judgment of said district court; it is, therefore, considered, ordered and adjudged that said judgment of the district court be, and the same hereby is, affirmed; that appellee pay all costs incurred herein by him, taxed at $——, and have and recover from appellant all his costs so expended; that appellant pay all costs incurred herein by it, taxed at
115 $——, for all of which execution is hereby awarded, and that a mandate issue accordingly.

M. B. REESE,
Chief Justice.

And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Opinion by said Court, pursuant to which the preceding judgment was entered, which Opinion is in the words and figures following, to-wit:

116

No. 16213.

HALL
v.
CHICAGO, B. & Q. R. Co.

Opinion Filed Nov. 26, 1910.

1. A garnishment of funds belonging to an insolvent person within four months of the time he is adjudged a bankrupt is, within the meaning of the bankrupt act of 1898, dissolved and rendered null and void by the bankrupt proceedings.

2. The bankruptcy laws of Congress enacted pursuant to the powers delegated to it by the federal constitution are binding upon the state as well as the federal courts, and the state courts are bound to respect the rights acquired under them.

3. The provisions of subdivision *f*. of section 67 of the bankrupt act, and the proceedings of the federal court adjudging an insolvent debtor a bankrupt, are a complete defense to the enforcement of judgments rendered by state courts against a garnishee within four months of the filing of the debtor's petition in bankruptcy.

117 BARNES, *J.*:

In the months of June, July and August, 1907, the appellee, William H. Hall, the plaintiff in the court below, was a married man and the head of a family residing in Douglas county, Nebraska; he was employed by the appellant as a switchman in its yards at Omaha, and had formerly lived at Creston in Union county, Iowa. On proceedings had in the courts of that state and county certain judgments were entered against him, and garnishment proceedings thereon were prosecuted against the appellant, the Chicago, Burlington & Quincy Railroad Company as follows: On April 25, 1894, one B. N. Torrey recovered a judgment against Hall in the justice court of Union county, Iowa, for $24.40 debt, with six per cent interest from that date, and $3.80 costs; July 8, 1907, a transcript of that judgment was filed in the office of the clerk of the district court of said county, and on July 26, 1907, an execution was issued by the clerk of that court on said judgment, which was duly served by the garnishment of the defendant company as a debtor of Hall. On August 27, 1907, the district court entered a personal judgment against the railroad company for $39.26 debt, with six per cent interest from the date, and $17.65 costs. On July 20, 1907, and J. A. Rawls brought suit against Hall in the justice court of Union county, Iowa, and on July 29, 1907, judgment was rendered in said action against him for $52.50 debt, with six per cent interest and $2.20 costs. On the same day an execution was issued on that judgment, and the defendant railroad company was
118 garnished as the debtor of Hall. On August 10, 1907, a personal judgment was rendered in said justice court in favor of Rawls and against the defendant company for $61.60, or so much thereof as should remain in its hands after the payment of the judgment rendered in the garnishment proceedings in favor of B. N. Torrey. In both the Torrey and Rawls cases the court which rendered the judgment against Hall had obtained jurisdiction by personal service of the original notice in the state of Iowa as prescribed by the code of procedure of that state, and the courts rendering said judgments were courts of competent jurisdiction, and had personal jurisdiction of Hall and of the Chicago, B. & Q. R. Co., the garnishment, together with the subject matter of said actions.

It further appears that Hall filed a voluntary petition in bankruptcy in the United States district court for the district of Nebraska, and on August 7, 1907, was, by that court, adjudged a bankrupt under the statutes of the United States. In the schedule which he filed in that court the bankrupt listed the several judgments above referred to, and the claim upon which they were founded, and also listed and claimed as exempt, the wages which were due him from the appellant railroad company for the months of June and July, 1907, amounting to $187, and on March 18, 1908, the referee in bankruptcy set off these wages to Hall as exempt under the laws of Nebraska. No other property was listed, and therefore no trustee in bankruptcy was elected.

It is admitted by the parties that Hall was at all of said times

insolvent, and earned the wages in question during the
119 months of June and July, 1907. In the garnishment proceedings above referred to the railroad company made answer showing its indebtedness on account of said wages, and it was upon this disclosure that the judgments in the garnishment proceedings were rendered.

It also appears that prior to the entry of the judgment against the defendant company above referred to, garnishment proceedings had been instituted in a case brought by one Locke against the defendant Hall; that the railroad company had paid and satisfied the amount involved in that proceeding, and that the remainder of plaintiff's wages amounting to $122.40 is the matter now in controversy; that the defendant railroad company has retained, and still has, that sum in its possession which was earned as wages by Hall, as above stated. The defendant railroad company claiming that it was liable for the payment of the judgments rendered against it in the garnishee proceedings above described, refused to pay the money so remaining in its hands to Hall, who thereupon brought this action. The suit was commenced in the county court of Douglas county and the plaintiff had judgment; an appeal was prosecuted to the district court, where he again had judgment, and the railroad company has appealed to this court.

The appellant's contention, briefly stated, is as follows: That the judgments rendered against it in the Iowa courts are regular and are valid, subsisting liens or claims against it, which cannot be collaterally attacked or impeached; that under the Iowa law the
120 wages of Hall, a resident of Nebraska, were subject to garnishment in the courts of that state, and that the rule of the Iowa courts refusing to give effect to Hall's Nebraska exemptions is valid, and must be enforced and respected in the courts of this state; and that such judgments constitute a complete defence to the plaintiff's action. On the other hand it is contended by the plaintiff that by the terms of sub-division "*f*" of section 67 of the Federal Bankrupt Law of 1898, Vol. 3, Comp. St. of the U. S. 1901, his adjudication as a bankrupt rendered the judgments of the Iowa courts against him and the defendant railroad company, null and void; and therefore such judgments are no defense whatever to his right to recover in this action, and this is the only question presented for our determination.

Section 67, sub-division "*f*" of the Bankrupt Act of 1898, 30 St. 544, 565, reads: "All levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee

for the benefit of the estate as aforesaid. And the court may
121 order such conveyance as shall be necessary to carry the purposes of this section into effect: Provided, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry."

The effect of the foregoing provisions of the federal bankrupt law was determined by the supreme court of Minnesota in Cavanaugh v. Fenley, (Chicago Great Western Ry. Co., Garnishee,) 94 Minn. 505, 103 N. W. 711, and it was there held that all levies, judgments, attachments, or other liens obtained through legal proceedings against a person, who is insolvent, at any time within four months prior to the filing of his petition in bankruptcy shall be deemed null and void in case he is adjudged a bankrupt, whether such proceeding was voluntary or involuntary; and that the garnishment of funds belonging to an insolvent person within four months of the time he is adjudged a bankrupt is, within the meaning of the bankruptcy act, dissolved and rendered null and void by the bankruptcy proceedings notwithstanding the insolvent person made no reference in his schedule of assets to the fact that the indebtedness had been garnished.

This rule, so far as we have been able to ascertain, has been generally adopted or followed by the courts of the other states wherever the question has been presented to them. Wise Coal Co. v. Lead and Zinc Co., 123 Mo. App. 249; Armour Packing Co. v
122 Wynn, 119 Ga. 683; Wood v. Carr, 115 Ky. 303; Alexander v. Wilson, 144 Cal. 5, and Thompson v. Ragan, 117 Ky. 577.

This question has also been many times before the federal courts. In re Beals, 116 Fed. 530, it was said: "Under Bankr. Act. 1898, sec. 67*f*, an adjudication in bankruptcy, whether in voluntary or involuntary proceedings, renders void a judgment against the garnishee rendered in an action brought against the bankrupt within four months prior to the filing of the petition, and when he was insolvent, and discharges the garnishee from liability thereon, and such judgment must thereafter be treated as a nullity whenever drawn in question, whether directly or collaterally."

In re Tune, 115 Fed. 906, this question was presented, and it was said: "Whatever benefit results from the annulment of attachment liens extends to exempt property as well as to that which is not exempt. It is the policy of the law to allow the bankrupt, as well as creditors, to benefit by the changed status."

The case of Clark v. Larremore, 188 U. S. 486, was one which involved the construction of the provisions of the bankruptcy law in question in this case, and it was said by Mr. Justice Brewer that: "As judgment, execution and levy were all within four months prior to the filing of the petition in bankruptcy, the lien created thereby became null and void on the adjudication of bankruptcy. This nullity and invalidity relate back to the time of the entry of the

judgment and effect that and all subsequent proceedings.
123 The language of the statute is not 'when' but 'in case he is adjudged a bankrupt' and the lien obtained through these legal proceedings was by the adjudication rendered null and void from its inception."

From the foregoing authorities, it seems clear that the plaintiff's contention should be upheld.

In support of defendant's position our attention is directed to the case of Lockwood v. Bank, 190 U. S. 294, which seems to be greatly relied on by counsel. We think the facts of that case clearly distinguish it from the one at bar. There it appeared that the creditor held a contract against the bankrupt entered into more than four months before the filing of his petition in bankruptcy by which he especially waived and renounced all his right to the homestead exemption allowed him by the laws of the state of Georgia or the United States; and that such contracts or waivers were generally upheld and enforced by the courts of that state. Therefore the federal court declined to administer and distribute the exempt property as an asset of the bankrupt and withheld his discharge until a reasonable time should elapse to enable the creditors to assert, in the state court, their rights to subject the exempt property to the satisfaction of their claims, under the waiver given as security therefor.

From an examination of the other cases cited by counsel for the defendant, it would seem that they are distinguishable from the case at bar, and afford us no substantial authority for a reversal of the judgment of the district court.

It is further contended that the courts of the state of Iowa
124 may proceed to collect the judgments rendered by them against the defendant, and that by so doing it will be compelled to pay them. We are of opinion that those judgments cannot be enforced, and that it is not at all likely that either the courts or the judgment creditors will make any attempt to enforce their payment. The bankruptcy laws of Congress, enacted pursuant to the powers delegated to it by the federal constitution, are binding upon the state as well as the federal courts; the state courts are bound to respect the rights acquired under them, and it is not to be believed that any of our state courts will attempt to override or nullify any of such laws. But if any such attempt is made the bankruptcy proceedings furnish a complete and adequate defense thereto.

For the foregoing reasons the judgment of the district court is right, and it is therefore

Affirmed.

125 And afterwards, to-wit, on the 5th day of January, 1911, there was filed in the office of the Clerk of said Supreme Court a certain Motion for Rehearing, in the words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Appellant.

Appeal from the District Court of Douglas County.

A. C. Troup, Judge.

Motion for Rehearing.

The appellant moves the court to set aside the opinion and judgment of the affirmance entered in this cause Nov. 26, 1910, and grant a rehearing thereof for the following reasons:

1. The court erred in holding that Sec. 67*f* of the Act of Congress, approved July 1, 1898, entitled "An Act to establish a Uniform System of Bankruptcy throughout the United States," applies to liens or claims upon exempt property of the bankrupt.

2. The court erred in holding that Sec. 67*f* of said Act had the effect of rendering null and void the judgments rendered against this appellant in the garnishment proceedings in the Iowa
126 courts, and shown by the record in this case.

3. The judgment rendered by the district court in this action and the judgment of this court affirming the same deny full faith and credit to the judgments rendered against this appellant in the Iowa courts and set out in the record in this action, contrary to and in violation of Sec. 1, Article IV, of the Constitution of the United States.

ARTHUR R. WELLS,
Attorney for Appellant.

JAMES E. KELBY,
Of Counsel.

Endorsed: 16213.—Hall v. C. B. & Q. R. Co.—Motion for rehearing.—Supreme Court of Nebraska.—Filed Jan. 5, 1911.—H. C. Lindsay, Clerk.

And afterwards, to-wit, on the 24th day of January, 1911, there was rendered by said Supreme Court and entered of record upon the Journal thereof a certain Order in the words and figures following, to-wit:

Supreme Court of Nebraska, January Term, A. D. 1911.

JAN. 24.

No. 16213.

WILLIAM H. HALL, Appellee,
v.
CHICAGO, B. & Q. R. Co., Appellant.

Appeal from the District Court of Douglas County.

This cause coming on to be heard upon motion of appellant for a rehearing herein, was submitted to the court; upon due consideration whereof, the court doth find no probable error in the judgment of this court heretofore entered herein; it is, therefore, considered, ordered and adjudged that said motion for rehearing be, and the same hereby is, overruled, and a rehearing herein denied.

M. B. REESE,
Chief Justice.

127 And afterwards, to-wit, on the 26th day of January, 1911, there was filed in the office of the Clerk of said Supreme Court a certain petition for writ of error, in the words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Appellant.

Petition for Writ of Error.

To the Honorable Manoah B. Reese, Chief Justice of the Supreme Court of Nebraska:

Your petitioner, the Chicago, Burlington and Quincy Railroad Company, a corporation, respectfully states that on the 26th day of November, A. D., 1910, in the Supreme Court of the State of Nebraska a judgment was rendered against this petitioner in a suit wherein William H. Hall was the plaintiff and appellee, and said Chicago, Burlington and Quincy Railroad Company was the defendant and appellant; on the 24th day of January, A. D. 1911, said appellant's motion for a rehearing in said cause was by the said court overruled; The aforesaid judgment is final and the court rendering the same is the highest court in said State in which a decision of said cause could be had.

Your petitioner further shows that in said action certain rights, privileges, and immunities under the Constitution and Statutes of the United States were specially set up and claimed by the peti-

tioner, and the decision of said court in said action was against the said rights, privileges, and immunities specially set up and
128 claimed by the said petitioner.

Your petitioner further shows that there was also drawn in question in said action the validity of the statute of or authority exercised under the State of Nebraska on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of their validity.

Wherefore, petitioner prays the allowance of a writ of error removing the records and proceedings in said suit to the Supreme Court of the United States, and that a citation be directed to said William H. Hall, defendant in error, for his due appearance in said Supreme Court.

CHICAGO, BURLINGTON AND QUINCY
RAILROAD COMPANY,
By JAMES E. KELBY,
ARTHUR R. WELLS,
Its Attorneys.

Writ of error and citation in the within named and above entitled case allowed this — day of ——, 19—.

——— ———,
Chief Justice of the Supreme Court
of the State of Nebraska.

Endorsed: 16213.—In the Supreme Court of the State of Nebraska.—Wm. H. Hall, Appellee, vs. Chicago, Burlington and Quincy Railroad Co., Appellant.—Petition for Writ of Error.—Supreme Court of Nebraska.—Filed.—Jan. 26, 1911.—H. C. Lindsay—Clerk.

And on the same day there was filed in the office of the Clerk of said Supreme Court, a certain assignments of error, in the words and figures, to-wit:

129 In the Supre[illegible] Court of the State of Nebraska.

WILLIAM H. HALL, Plaintiff and Appellee,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Defendant and Appellant.

Assignments of Error.

Comes now the Chicago, Burlington and Quincy Railroad Company, defendant and appellant, and alleges that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Nebraska in the above entitled cause there are the following errors upon which the said Chicago, Burlington and Quincy Railroad Company will reply in the prosecution of the writ of error in the above entitled case (the parties being hereinafter designated "plaintiff" and "defendant" respectively, as in the court below):

1.

The court erred in affirming the judgment of the District Court of Douglas County, Nebraska, in favor of the plaintiff and against the defendant.

2.

The court erred in overruling the defendant's motion for a rehearing.

3.

The court erred in that the judgment rendered by it fails and refuses to give full faith and credit to the judgment rendered in the Justice Court of Union County, Iowa, in favor of J. M. Locke and against the Chicago, Burlington and Quincy Railroad Company, the defendant herein, which judgment was set out in the defendant's answer in this cause and is shown by the record herein,
130 contrary to and in violation of Section 1, Article IV, of the Constitution of the United States.

4.

The court erred in rendering its judgment, which in effect failed and refused to give full faith and credit to the judgment rendered by the District Court of Union County, Iowa, in favor of B. N. Torrey and against the Chicago, Burlington and Quincy Railroad Company, the defendant herein, which judgment was set out in the answer of the defendant in this cause and is shown by the record herein, contrary to and in violation of Section 1, Article IV, Constitution of the United States.

5.

The court erred in rendering its judgment, which in effect failed and refused to give full faith and credit to the judgment rendered by the Justice Court of Union County, Iowa, in favor of J. A. Rawls and against the Chicago, Burlington and Quincy Railroad Company, the defendant herein, which judgment was set out in the defendant's answer in this cause and is shown by the record herein, contrary to and in violation of Section 1, Artcile IV, of the Constitution of the United States.

6.

The court erred in holding that Section 67*f* of the Act of Congress, approved July 1, 1898, entitled, "An Act to establish a Uniform System of Bankruptcy throughout the United States" (30 Stat. L. 565) applies to liens or claims upon the exempt property of the bankrupt.

7.

The court erred in holding that Section 67*f* of said Bankruptcy Act had the effect of rendering null and void the judgments rendered against the Chicago, Burlington and Quincy Railroad Com-
131 pany, this defendant in the several proceedings in the Iowa courts, which are set out in the defendant's answer and shown

by the record in this case, which are hereinabove specially referred to.

8.

The court erred in holding that the several judgments rendered against this defendant in the courts of the State of Iowa, which were set out in the defendant's answer and shown by the record, did not constitute a complete defense to the plaintiff's cause of action stated herein, contrary to and in violation of the Constitution of the United States.

Wherefore the said Chicago, Burlington and Quincy Railroad Company prays that the judgment of the Supreme Court of the State of Nebraska, rendered in this cause, be reversed, and that judgment be rendered herein in favor of the said Chicago, Burlington and Quincy Railroad Company, and for costs.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
By JAMES E. KELBY,
ARTHUR R. WELLS,
Its Attorneys.

Endorsed: 16213.—In the Supreme Court of the State of Nebraska. Wm. H. Hall, Plaintiff and Appellee, vs. Chicago, Burlington and Quincy Railroad Co., Defendant & Appellant.—Assignments of Error.—Supreme Court of Nebraska.—Filed.—Jan. 26, 1911.—H. C. Lindsay—Clerk.

And afterwards, to-wit, on the 27th day of January, 1911, there was rendered by said Supreme Court and entered of record
132 upon the Journal thereof a certain order refusing allowance of writ in the words and figures following, to-wit:

Supreme Court of Nebraska, January Term, 1911.

JAN. 27.

No. 16213.

WILLIAM H. HALL, Appellee,
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, Appellant.

Appeal from the District Court of Douglas County.

This cause coming on to be heard upon petition of appellant for the allowance of a writ of error removing the records and proceedings in this suit to the Supreme Court of the United States, was submitted to the court; upon due consideration whereof, it is by the court ordered that said petition for writ of error be, and the same hereby is, denied and said application refused.

M. B. REESE,
Chief Justice.

And afterwards, to-wit, on the 28th day of January, 1911, there was filed in the office of the Clerk of said Supreme Court a certain motion to withhold mandate, in the words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Appellant.

Motion to Withhold Mandate.

133 Comes now the appellant, Chicago, Burlington and Quincy Railroad Company, and moves the court to withhold the issuance of the mandate in this cause for a period of thirty days in order to enable the appellant to present a petition for the allowance of a writ of error to the Supreme Court of the United States, or to some justice thereof, and as ground therefor shows the court:

The appellant has presented a petition for the allowance of said writ of error to the Honorable, the Chief Justice of this Court, who has refused to allow said writ, and the appellant believing in good faith that by the judgment of this court the appellant has been denied certain rights, privileges, and immunities, specially set up and claimed by it, under the Constitution and statutes of the United States, desires to present a petition for the allowance of said writ of error to the Supreme Court of the United States, or to some Justice thereof.

Under the practice of the Supreme Court of the United States it will be necessary for the petitioner to present to a Justice of said Court its petition for the allowance of the writ, accompanied by certified transcript of the record in this action. The clerk of this Court will require several days to make said transcript and immediately upon its completion and without delay, this appellant will cause the same to be presented to a Justice of the Supreme Court of the United States, which presentation must be made at the City of Washington. The appellant is not advised and is unable to state how soon the said application will be passed upon by the Justice of the Supreme Court, to whom the same may be presented.

JAMES E. KELBY,
ARTHUR R. WELLS,
Attorneys for Chicago, Burlington and Quincy Railroad Company.

134 Endorsed: 16213.—In the Supreme Court of the State of Nebraska.—Wm. H. Hall, Appellee, vs. Chicago, Burlington and Qunicy Railroad Company.—Motion to withhold Mandate.—Supreme Court of Nebraska.—Filed.—Jan. 28, 1911.—H. C. Lindsay, Clerk.

135 Supreme Court.

STATE OF NEBRASKA, *ss:*

I, H. C. Lindsay, clerk of said court, do hereby certify that the foregoing pages, numbered from 1 to 134, inclusive, are a true, full and complete transcript of the record and proceedings in the case of William H. Hall, appellee, v. Chicago, Burlington and Quincy Railroad Company, a corporation, Chicago, Burlington and Quincy Railway Company, a corporation, and Bartlett N. Torrey, appellants, No. 16213, also of the opinion of the court rendered therein, and a copy of appellants' motion for rehearing and judgment overruling the same, said transcript also including a copy of the petition of said appellants for the allowance of a writ of error to the Supreme court of the United States, removing the records and proceedings in said state to the Supreme Court of the United States filed in said court on January 26, 1911, a copy of the assignments of error filed therewith on said date, a copy of the order of said Supreme Court refusing the allowance of said writ entered on January 27, 1911 and of the motion to withhold mandate filed in my said office on January 28, 1911.

And I further certify that on February 4, 1911 there was filed with me as such clerk in the said case, a petition for writ of error in said case addressed to the Hon. Willis Van Devanter, Justice of the Supreme Court of the United States, a certified copy of which is incorporated herein, and that on the 7th day of March, 1911, there was filed with me as such clerk in said case, (1) an order signed and dated by Hon. Willis Van Devanter, Justice of the Supreme Court of the United States, allowing the writ of error prayed for and approving the bond presented by the petitioner for the writ, which original order is incorporated herein; (2) the
136 original writ of error allowed by Hon. Willis Van Devanter, Justice of the Supreme Court of the United States, and issued under the signature and seal of the clerk of the Supreme Court of the United States, which original writ is incorporated herein; (3) the original citation signed by the Hon. Willis Van Devanter, Justice of the Supreme Court of the United States, with proof of service thereof attached thereto, which said original citation and proof of service is incorporated herein; (4) the supersedeas bond presented with the petition in error and approved by the said Justice Willis Van Devanter, of which bond a copy is herein set forth; (5) two copies of the original writ of error incorporated herein were at the same time lodged with me,—one for the defendant in error and one to be filed in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in the city of Lincoln, Nebraska, this 7th day of March, 1911.

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk Supreme Court of Nebraska.

137 On the 4th day of February, 1911 there was filed in the office of the clerk of said supreme court a certain petition for writ of error, in the words and figures following, to-wit:

In the Supreme Court of the State of Nebraska.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Appellant.

Petition for Writ of Error.

To the Honorable Willis Van Devanter, Justice of the Supreme Court of the United States:

Your petitioner, Chicago, Burlington and Quincy Railroad Company, a corporation, respectfully states that on the 26th day of November, A. D., 1910, in the Supreme Court of the State of Nebraska a judgment was rendered against this petitioner in a suit wherein William H. Hall was the plaintiff and appellee, and said Chicago, Burlington and Quincy Railroad Company was the defendant and appellant; on the 24th day of January, A. D., 1911, said appellant's motion for a rehearing in said cause was by the said court overruled; the aforesaid judgment is final and the court rendering the same is the highest court in said State in which a decision of said cause could be had.

Your petitioner further shows that in said action certain rights, privileges, and immunities under the Constitution and Statutes of the United States were specially set up and claimed by the petitioner, and the decision of said court in said action was against the said rights, privileges, and immunities specially set up and claimed by the said petitioner.

138 The petition of the plaintiff, William H. Hall, in said case alleged that the defendant (this petitioner) was indebted to the said plaintiff on account of certain wages earned by him in the employment of the defendant at Omaha, in Douglas County, Nebraska, and prayed for judgment for the amount thereof.

The answer of the defendant admitted that said plaintiff had earned a certain sum as wages in defendant's employment, but further alleged that prior thereto certain creditors of said plaintiff Hall had obtained personal judgments against him in the courts of Union County, Iowa, and that upon said judgment a garnishment proceedings were instituted against said defendant Railroad Company (this petitioner), in which garnishment proceedings three personal judgments were rendered against this petitioner, the Chicago, Burlington and Quincy Railroad Company, by the courts of Union County, Iowa, and in favor of three certain creditors of said Hall, which judgments against this petitioner were valid and in full force and effect, and the amount of said judgments, including interest and costs, was greater than the amount of wages earned by said Hall in the employment of said defendant.

This petitioner, the defendant in said action, specially set up and claimed in its said answer that the said judgments rendered against it by the courts of Iowa were a complete defense to the action of the said plaintiff, and that to render judgment against this petitioner, the defendant in said cause, would, in effect, deny to the judgments of said Iowa courts in said garnishment proceedings, in favor of the creditors of said Hall and against this petitioner, that full faith and credit which they had in Iowa and to which they were entitled in Nebraska, under Section 1, Article IV, of the Constitution of the United States.

The plaintiff for reply to the answer alleged that he had, after the beginning of the said garnishment proceedings and the rendition of said judgments, filed a voluntary petition in bankruptcy
139 in the District Court of the United States for the District of Nebraska, and had been adjudicated a bankrupt by said court, and the wages which he was suing to recover from this petitioner had been set off to him as exempt property, and claimed that his said adjudication had the legal effect of canceling and annulling the personal judgments rendered against this petitioner in favor of the said Hall's creditors in the courts of Iowa.

Judgment was rendered in the District Court of Douglas County, Nebraska, in favor of said plaintiff Hall and against this petitioner, and upon an appeal by this petitioner to the Supreme Court of Nebraska said judgment was by the Supreme Court of Nebraska affirmed, and a motion for rehearing filed by this petitioner was overruled.

This petitioner did, at all stages of said proceedings, by its answer as aforesaid, by its motion for a finding in its favor in said trial court, by motion for a new trial in said court, and by its assignment of errors and motion for rehearing in the Supreme Court, specially set up and claim that the said judgments of said Iowa courts constituted a complete defense to the action of the plaintiff herein, and that the judgment rendered in this action by the courts of Nebraska denied to said Iowa judgments full faith and credit, contrary to and in violation of Section 1 of Article IV of the Constitution of the United States.

This petitioner did likewise, at all stages of said proceedings, by its motion for a finding in its favor in the trial court, by motion for a new trial in said court, and by its assignment of errors and motion for rehearing in the Supreme Court, specially set up and claim that the Act of Congress commonly known as the "Federal Bankruptcy Act" excepted from the operation of its provisions the exempt property of the bankrupt, and left creditors with claims or liens thereon, to prosecute their said claims in the State courts with the same effect as if no adjudication in bankruptcy had been made, and that,
140 therefore, the adjudication of said Hall as a bankrupt did not, of its own force and effect and without further proceedings on his part in said Iowa court, have the effect of canceling said judgments against this petitioner. This petitioner specially set up and claimed immunity under the provisions of said Federal Bankruptcy Act from the right of action asserted by said Hall, and claimed that judgment could not consistently with the terms of

said Bankruptcy Act be rendered against this petitioner in this action, but on the contrary that said Iowa judgments were valid and in full force and effect.

Your petitioner, therefore, respectfully alleges that in said proceedings there was manifest error involving the following Federal questions:

1. The judgment herein rendered did not give to the judgments rendered against this petitioner in said garnishment proceedings in the courts of the State of Iowa the full faith and credit which they had in the courts of said State, and to which they were entitled in the courts of Nebraska, contrary to and in violation of Section 1, of Article IV, of the Constitution of the United States, under the rule announced by the Supreme Court of the United States in the following cases:

C. R. I. & P. vs. Sturm 174 U. S. 710.
Harris vs. Balk, 198 U. S. 215.
L. & N. vs. Deer 200 U. S. 176.

2. Said judgment, in effect, overruled the contention of this petitioner that a judgment could not be rendered against it in this case consistently with the Statutes of the United States commonly known as the "Bankruptcy Act," and denied the right and immunity asserted by this petitioner under said Statutes to protection in the payment and performance of said Iowa judgments, contrary to the rule announced by the Supreme Court of the United States in the following cases:

141 McCormick v. Bank 165 U. S. 538.
Nutt v. Knut 200 U. S. 12.
Eau Claire Bank v. Jackman 204 U. S. 522.

Wherefore, your petitioner prays for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Nebraska and the Judges thereof, to the end that the record of said cause may be removed into the Supreme Court of the United States, and the error complained of by your petitioner may be examined and corrected, and said judgment reversed and your petitioner discharged; and your petitioner will ever pray.

CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY,
By CHARLES F. MANDERSON,
JAMES E. KELBY,
ARTHUR R. WELLS,
Its Attorneys.

The foregoing petition for writ of error having been presented for allowance, and said petition and the record in said cause having been examined,

It is ordered, that a writ of error be, and is hereby allowed, from the Supreme Court of the United States to the Supreme Court of the State of Nebraska, and that the bond presented herewith by said

petitioner be, and the same is hereby approved this — day of ——, A. D., 19—, at Washington, D. C.

——— ———.

Justice of the Supreme Court of the United States.

Endorsed: 16213. In the Supreme Court of the State of Nebraska. Wm. H. Hall, Appellee vs. Chicago, Burlington and Quincy Railroad Company, Appellant. Petition for Writ of Error. Supreme Court of Nebraska. Filed Feb. 4, 1911. H. C. Lindsay Clerk.

142 STATE OF NEBRASKA, *ss:*

I, H. C. Lindsay, clerk of the supreme court within and for said state, do hereby certify that the annexed and foregoing is a true and correct copy of a certain petition for writ of error addressed to the Honorable Willis Van Devanter, justice of the Supreme Court of the United States in the case of William H. Hall, appellee, v. Chicago, Burlington and Quincy Railroad Company, appellant, No. 16213, and which said petition for writ of error was filed in said supreme court on the 4th day of February, A. D. 1911.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Lincoln in said state, this 10th day of February, A. D. 1911.

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY, *Clerk.*

143 In the Supreme Court of the State of Nebraska.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Appellant.

Order Allowing Writ of Error.

The above entitled cause being heard upon the petition of the Chicago, Burlington and Quincy Railroad Company, the appellant therein, for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Nebraska, and the petition and the record in said cause having been examined,

It is ordered that a writ of error be, and is hereby allowed, from the Supreme Court of the United States to the Supreme Court of the State of Nebraska, and that the bond presented by said petitioner be, and the same is hereby approved.

Done at Washington this 23rd day of February, A. D., 1911.

WILLIS VAN DEVANTER,
Justice of the Supreme Court of the United States.

144 [Endorsed:] 16213. In the Supreme Court of the State of Nebraska. Wm. H. Hall, Appellee, v. C., B. & Q. R. R., Appellant. Order allowing Writ of Error. Supreme Court of Nebraska. Filed Mar. 7, 1911. H. C. Lindsay, Clerk.

145

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of Nebraska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Nebraska before you, or some of you, being the highest Court of Law or Equity of the said State in which a decision could be had between Chicago, Burlington and Quincy Railroad Company, a corporation, defendant and plaintiff in error, and William H. Hall, plaintuff and defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, Treaties or Laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a Treaty or Statute of, or commission held under the United States, and the decision was against the right, title, privilege and immunity specially set up or claimed by said plaintiff in error under such clause of said Constitution, Treaty, Statute or Commission, and manifest error hath happened to the great damage of the above named plaintiff in error as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same in said Supreme Court of the United States at Washington within thirty days from the date hereof, that the record and proceedings aforesaid, being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 23d day of February, in the year of our Lord, One Thousand Nine Hundred and Eleven.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed:

WILLIS VAN DEVANTER,
Justice of the Supreme Court
of the United States.

146 UNITED STATES OF AMERICA,
Supreme Court of Nebraska, ss:

Return to Writ.

In obedience to the commands of the within writ, I hereby transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of the said supreme court of Nebraska, in the city of Lincoln, this March 7, 1911.

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk Supreme Court of Nebraska.

147 [Endorsed:] 16213. In the Supreme Court of Nebraska. Wm. H. Hall, Appellee, v. Chicago, Burlington & Quincy Railroad Co., Appellant. Writ of Error. Supreme Court of Nebraska. Filed Mar. 7, 1911. H. C. Lindsay, Clerk.

148 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To William H. Hall, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date of service hereof, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the State of Nebraska, wherein Chicago, Burlington and Quincy Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Willis Van Devanter, Justice of the Supreme Court of the United States, this 23rd day of February, in the year of our Lord One Thousand nine hundred and Eleven.

WILLIS VAN DEVANTER,
Justice of the Supreme Court of the United States.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 2 day of March, 1911 I received this Citation, and on the 2 day of March, 1911 I served the same upon the within-named William H. Hall at Omaha Nebr. in Douglas County, State and District of Nebraska, by delivering to

and leaving with him a certified copy thereof, with all the indorsements thereon.

WM. P. WARNER,
United States Marshal for the District of Nebraska,
By H. P. HAZE,
Deputy United States Marshal.

Marshal's Costs.

Service.....	$2.00
Mileage.....	
Expense.....	.10
Total.....	$2.10

Pd. by C., B. & Q. R. R.

Supreme Court of Nebraska. Filed Mar. 7, 1911. H. C. Lindsay, Clerk.

149 [Endorsed:] 16213. William H. Hall, Appellee, vs. Chicago, Burlington & Quincy Railroad Company, Appellant. Citation. Supreme Court of Nebraska. Filed Mar. 7, 1911. H. C. Lindsay, Clerk. Rec'd at Marshal's office 3/2/1911. Handed Deputy 3/2/1911.

150 In the Supreme Court of the State of Nebraska.

WILLIAM H. HALL, Appellee,
vs.
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, Appellant.

Supersedeas Bond.

Know all men by these presents, that we, Chicago, Burlington and Quincy Railroad Company, as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto the above named William H. Hall in the full and just sum of One thousand dollars ($1,000.00) to be paid to the said William H. Hall, his certain attorney, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Dated this 26th day of January, 1911.

Whereas, lately at a term of the above named court, and in a suit pending therein, between the above named William H. Hall as plaintiff, and appellee, and said Chicago, Burlington and Quincy Railroad Company as defendant, and appellant, judgment was rendered against the said Chicago, Burlington and Quincy Railroad Company, and it having prayed and obtained a writ of error and filed a copy thereof in the Clerk's office of the said court to reverse

the judgment in the aforesaid suit; and a citation directed to the said William H. Hall, citing and admonishing him to be and appear at a Supreme Court of the United States to be held at Washington, the 7th day of March, 1911.

Now, the condition of the above obligation is such that if the said Chicago, Burlington and Quincy Railroad Company shall prosecute its said writ to effect, and answer all damages and costs if
151 it fail to make its plea good, then the above obligation to be void, otherwise to remain in full force and effect.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
By JAMES E. KELBY &
ARTHUR R. WELLS,
Its Attorneys.
UNITED STATES FIDELITY AND GUARANTY COMPANY, [SEAL.]
By W. A. YONSON, *Attorney in Fact.*

In presence of:
H. S. TYLER.

The above and foregoing bond approved by me this 23rd day of February, 1911.

WILLIS VAN DEVANTER,
Justice of the Supreme Court of the United States.

Endorsed: 16213. In the Supreme Court of the State of Nebraska. Wm. H. Hall, Appellee, vs. Chicago, Burlington and Quincy Railroad Company, Appellant. Supersedeas Bond. Supreme Court of Nebraska. Filed Mar. 7, 1911. H. C. Lindsay, Clerk.

Endorsed on cover: File No. 22,576. Nebraska Supreme Court. Term No. 249. Chicago, Burlington & Quincy Railroad Company, plaintiff in error, vs. William H. Hall. Filed March 17th, 1911. File No. 22,576.

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BRIEF OF PLAINTIFF IN ERROR.

Supreme Court of the United States

October Term, 1912.

No. 249.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Plaintiff in Error,

vs.

WILLIAM H. HALL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

STATEMENT OF THE CASE.

This case involves the review of a decision of the Supreme Court of Nebraska, interpreting the National Bankruptcy Act and that provision of the Constitution of the United States which requires that full faith and credit shall be given in each state to the judicial proceedings of every other state.

In the months of June, July and August, 1907, William H. Hall, defendant in error, who was the plaintiff in the court below, was a married man and the head of a family residing in Douglas County, Nebraska, and was em-

ployed by the Chicago, Burlington and Quincy Railroad Company, the plaintiff in error, which was the defendant below, as a switchman in its yards at Omaha. Hall had formerly lived at Creston, in Union County, Iowa, and on proceedings duly had in the courts of that County three judgments were entered against Hall, and upon these judgments garnishment proceedings were prosecuted against the Chicago, Burlington and Quincy Railroad Company, and in all three of said proceedings personal judgments were rendered against the railroad company in accordance with the laws of Iowa, and in favor of the several garnishing creditors. The facts as to each of these proceedings as disclosed by the record were as follows:

(a) July 27th, 1907, J. M. Locke recovered judgment against Hall in the Justice Court of Union County, Iowa, for $48.65, with 6 per cent interest, and $7.55 costs. In said action a writ of attachment was issued against Hall on the ground that he was a non-resident of the State of Iowa and said writ was served by the garnishment of the appellant railroad company as a debtor of Hall July 20th, 1907, and on July 27th, 1907, a personal judgment was rendered in favor of said Locke against said railroad company for the sum of $56.20 with 6 per cent interest from said date. On July 31st, 1907, the railroad company paid said sum into said court in satisfaction and discharge of said judgment.

(b) April 25th, 1894, B. N. Torrey recovered a judgment against Hall in the Justice Court of Union County, Iowa, for $22.40 debt with 6 per cent interest from said date, and $3.80 costs. July 8th, 1907, a transcript of judgment was filed in the office of the Clerk of the District Court of said county as provided by the laws of Iowa, and on July 26th, 1907, an execution was

issued by the Clerk of said District Court on said judgment and was duly served July 20th, 1907, by the garnishment of said railroad company as a debtor of said Hall, and on August 27th, 1907, the District Court of said county rendered a personal judgment against the defendant railroad company for $39.26 debt, with 6 per cent interest from that date, and $17.65 costs.

(c) On July 20th, 1907, J. A. Rawls began suit against said Hall in the Justice Court of Union County, Iowa, and on July 29th, 1907, judgment was rendered in said action against Hall for $52.50 debt, and 6 per cent interest, and $2.20 costs, and on the same day an execution was issued on said judgment on which the defendant railroad company was garnished as the debtor of Hall and on August 10th, 1907, said Justice Court rendered a personal judgment in favor of Rawls against said defendant railroad company for $61.60, or so much thereof as shall remain in said garnishee's hands after the payment of the judgment rendered in the garnishment proceedings hereinabove referred to in favor of B. N. Torrey.

August 6, 1907, Hall filed a voluntary petition in bankruptcy in the United States District Court for the District of Nebraska and on August 7, 1907, he was by that court adjudicated a bankrupt under the laws of the United States. In the schedules which he filed in that Court he listed the several judgments above referred to, or the claims upon which they were founded, and also listed and claimed as exempt the wages which he had earned in the service of the Railroad Company for the months of June and July, 1907, which the parties now admit amounted to $178.60, and which the company would have owed him but for the institution of the three garnishment proceedings. March 18th, 1908, the referee in bank-

ruptcy set off these wages to Hall as exempt under the laws of Nebraska. No other property having been listed, no trustee was elected.

In the three garnishment proceedings in the Iowa courts the Railroad Company answered, showing its indebtedness to Hall on account of said wages, and it was upon this disclosure that the judgments against the Railroad Company in the garnishment proceedings were rendered. Hall filed no pleading in the Iowa courts in any of the garnishment cases claiming his exemptions or any rights under his adjudication in bankruptcy.

In the Locke case, the Railroad Company had paid the amount of the garnishment judgment into court before Hall filed his petition in bankruptcy; the Torrey and Rawls judgments still remained unsatisfied and the remainder of Hal's wages amounting to $122.40 was still in the Railroad Company's hands at the time he was adjudicated bankrupt.

On March 3, 1908, Hall filed in the United States District Court for the District of Nebraska, a petition praying that that Court summarily ordered the Railroad Company to pay to him the wages still in its hands, amounting to $122.40. To this petition the Railroad Company filed an answer and the court wrote an opinion and made a order denying the application upon the ground that it did not have jurisdiction (Exhibit 7, Printed Record, pages 67 to 73).

Hall then brought suit in the County Court of Douglas County, Nebraska, to recover these wages making both the Chicago, Burlington and Quincy Railroad Company and the Chicago, Burlington and Quincy Railway Company, defendants. The latter was not a necessary or proper defendant and its special appearance was sustained

and it was dismissed from the suit and no further attention need be paid to it. On a trial in the County Court a judgment was rendered in favor of Hall for the amount of the wages claimed and from this judgment an appeal was taken by the Railroad Company to the District Court of Douglas County, Nebraska, where under the laws of Nebraska new pleadings were filed and a trial had as in a court of original jurisdiction.

In answer to Hall's petition the Railroad Company set up the three judgments rendered against it in the several garnishment proceedings which were founded upon the Locke, Torrey and Rawls judgments against Hall. In reply Hall set up the fact that he had been adjudicated a bankrupt and that he had listed the several claims upon which the three judgments against him were founded and attached to his reply copies of his adjudication, order setting aside exemptions and his discharge. (Printed record, pages 2 to 11).

The Bill of Exceptions (printed record, pages 15 to 75) shows a stipulation covering most of the facts, a certified copy of the record of the bankruptcy court, duly certified transcripts of the records and proceedings in the Iowa courts in the Locke, Torrey and Rawls cases against Hall and in the several garnishment proceedings founded thereon, including the three personal judgments rendered against the Railroad Company and in favor of Locke, Torrey and Rawls respectively. The record also contains all those sections of the Iowa statutes fixing the jurisdiction of its courts and providing for the garnishment proceedings therein, as well as decisions of the Supreme Court of Iowa holding that the laws of that state do not give effect to and enforce the exemptions of non-residents of the state. No question arises as to any of the facts in the case

or as to the sufficiency of the certification of the records of the Iowa courts or proof of the laws of Iowa.

Although the record does not affirmatively show it, upon the trial Hall did not insist on having judgment for the amount which the Railroad Company had paid in satisfaction of the Locke judgment. Judgment was rendered for $132.30, which represented the balance of the wages in the Railroad Company's hands, amounting to $122.40 together with 7 per cent interest thereon up to the first day of that term of court, this allowance of interest being made in accordance with the laws of Nebraska. The trial court thus refused to enforce the Torrey and Rawls judgments in the garnishment proceedings against the Railroad Company as a defense to Hall's action.

The errors of the trial court in failing and refusing to give full faith and credit to the several judgments of the Iowa courts in favor of the garnishing creditors and against the Railroad Company as contrary to and in violation of the Constitution of the United States, and in holding and deciding that the bankruptcy proceedings had the effect of cancelling and annulling said judgments, were specifically and definitely raised by the Railroad Company's motion for a new trial in the district court (printed record, pages 12-13). The motion for new trial was overruled and an appeal was prosecuted to the Supreme Court of Nebraska. Under the laws of Nebraska the assignments of error in the Supreme Court are not a part of the record and are not shown by the transcript filed here, but the opinion of the court (printed record, pages 79 to 83) shows that these questions of the interpretation of the bankruptcy act and the full faith and credit clause of the Constitution were the sole questions

presented and decided. The Supreme Court of Nebraska affirmed the judgment of the lower court and a writ of error has been prosecuted to this court. (88 Neb 20)

Hall did not appear in the Iowa courts and plead his exemptions or his discharge in bankruptcy or any rights under the bankruptcy proceeding, nor has he ever at any time instituted any direct proceedings in the Iowa courts in which said judgments were rendered to set the same aside or enjoin their enforcement.

SPECIFICATION OF ERRORS.

The errors relied upon by the plaintiff in error are set out specifically in the assignment of errors (printed record, pages 86 to 88) and may be briefly stated as follows:

1. The Supreme Court of Nebraska erred in deciding that section 67 *f* of the Bankruptcy Act applies to exempt property of the bankrupt and that the bankruptcy proceedings, adjudication and discharge of Hall had the effect of cancelling, annulling and setting aside the judgments rendered by the Iowa courts in favor of Locke, Torrey and Rawls and against this plaintiff in error.

2. The court erred in holding that the said several judgments in the garnishment proceedings against this plaintiff in error were not a defense to the action of Hall, thereby failing and refusing to give to the said judgments of the Iowa courts that full faith and credit to which they were entitled under section 1, of Article IV of the Constitution of the United States.

BRIEF OF ARGUMENT.

In discussing the case it will be necessary:

(a) To determine just what the legal rights of Hall, the garnishing creditors and the Railroad Company were

under the proceedings in the Iowa courts at the time Hall filed his petition and was adjudicated a bankrupt.

(b) The effect, if any, of the bankruptcy proceedings upon the rights of the parties.

(c) Whether the full faith and credit clause of the Constitution has been ignored by the Nebraska courts.

I.

BY THE GARNISHMENT PROCEEDINGS IN THE IOWA COURTS, HALL'S GARNISHING CREDITORS OBTAINED SPECIFIC CLAIMS OR LIENS UPON THE FUNDS IN THE HANDS OF THE RAILROAD COMPANY BELONGING TO HALL BEFORE HALL FILED HIS PETITION IN BANKRUPTCY OR WAS ADJUDICATED A BANKRUPT.

No question has or can be raised as to the jurisdiction of the Iowa courts over the persons of all the parties or the subject matter of the actions or as to the regularity of the proceedings therein. In each of the Locke, Torrey and Rawls cases the court rendering the principal judgments against Hall had personal jurisdiction of Hall by service of the original process within the state of Iowa as prescribed by the Iowa code of procedure. The Railroad Company, the garnishee, had a line through Union County, Iowa, and an agent therein upon whom service was made and was personally within the jurisdiction of the Iowa court.

It is important to observe that under the Iowa procedure the garnishing creditors recovered personal judgments in the garnishment proceedings against the Railroad Company. The plaintiffs in those cases can collect said judgments at any time by issuing execution thereon and without any further proceedings; and these judg-

ments are conclusive against Hall. Iowa Code, Sections 3946, 3951, 3954 (printed record, pages 25 and 26).

It may be said by way of explanation, although the question is not open to inquiry here, that the Iowa courts refuse to give effect to the exemption laws of other states, and when, as in this case, a creditor can be reached by garnishment process in the Iowa courts it is no defense for the debtor to show that the fund in the garnishee's hands is exempt under the laws of another state. Although Hall did not appear and claim his exemptions under the Nebraska law, it would not have availed him if he had done so.

Mooney vs. Union Pacific, 60 Iowa, 346.
Bradstreet vs. Clark, 65 Iowa, 670.
Willard vs. Stern, 96 Iowa, 555.

The decisions in the Mooney and Bradstreet cases were offered in evidence and are found in the printed record, pages 29 to 33.

In all three cases the garnishment proceedings were instituted and service of the process made upon the Railroad Company before Hall filed his petition in bankruptcy and in the Locke case judgment had been rendered in the garnishment proceedings against the Railroad Company and money paid into court.

By the service of the garnishment process, which afterwards matured into judgments against the Railroad Company, the plaintiff in said actions obtained liens, or specific claims in the nature of liens, upon the funds in the garnishee's hands belonging to Hall or which the garnishee owed Hall, which liens or claims dated from the service of the garnishment process.

Buck Reiner Co. vs. Beatty, 82 Iowa, 353; 48 N. W. 96.
Menthorn vs. Hemple, 73 Iowa 357; 34 N. W. 844
20 Cyc. 1058.
Bank vs. Elliott, 109 Wis. 648; 85 N. W. 417.
Nat. Sur. Co. vs. Medlock, 58 S. E. 1131; 2 Ga. App. 665.
In re Maher, 169 Fed. 997.
Gilmore vs. Cohn, 102 Iowa 254; 71 N. W. 244.
Bowen vs. Port. Co., 109 Iowa 255; 80 N. W. 345.
R. I. Plow Co. vs. Reardon, 222 U. S. 354.

II.

THE BANKRUPTCY PROCEEDINGS DID NOT EFFECT THE CREDITORS' RIGHTS TO OR LIENS ON THE BANKRUPT'S EXEMPT PROPERTY.

The record shows that Hall listed the wages earned in the service of the Railroad Company as exempt property and that they were set off and allowed to him as such, and no trustee was elected. Clearly, therefore, this fund in the hands of the Railroad Company constituted no part of the bankrupt estate and Hall's creditors generally had no rights thereto. Locke, Torrey and Rawls had obtained specific claims in the nature of liens upon this fund by the initiation of the garnishment proceedings, before the filing of the petition in bankruptcy. The Supreme Court of Nebraska held that Section 67 *f* of the bankruptcy law had the effect of absolutely annulling and vacating these specific liens and the personal judgments against the Railroad Company into which they ripened.

The purpose of the Bankruptcy Act is to secure an equal distribution among the bankrupt's creditors of his property which is liable for his debts. A bankrupt is allowed to retain the property which under the laws of the

state in which he lives is exempt to him and the bankruptcy court takes possession of the exempt property, if at all, only to segregate it from the trust estate and set it off to the bankrupt. Throughout the Act a clear distinction is made between exempt and non-exempt property, it being required that the court take possession of and administer the non-exempt property, the title to which vests in the trustee, and it is converted into money and distributed to the creditors, while the only power the bankruptcy court has over the exempt property is to set it off to the bankrupt. This distinction is made clear by clauses (7) and (11) of Section 2. Among the acts of bankruptcy defined by Section 3, transfers of exempt property, or the giving or allowing of liens to be acquired thereon are not included; obviously the reason is that the creditors of the estate have no interest in such property and cannot complain of its disposition. By Section 6, it is provided that the Act shall not effect the allowance to bankrupts of the exemptions which are prescribed by the state laws and under section 47, clause (11), the first thing the trustee is required to do after qualifying is to set apart the bankrupt's exemptions.

Section 70 relating to title to property reads:

> "The trustee of the estate of a bankrupt, upon appointment, shall be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, *except insofar as it is property which is exempt.*

The intention to leave the exempt property unaffected by any proceedings had under the Bankruptcy Act could not have been made clearer than it is by the very terms of the statute.

In order to prevent one creditor from obtaining an undue preference or advantage and from thus securing a larger proportion of his debt than other creditors the law contains certain provisions in Sections 60 and 67 which render voidable at the suit of the trustee liens upon or conveyances of any part of the bankrupts' property which would otherwise become a part of the bankrupt estate and be distributed to his creditors if such liens are obtained or conveyances made within four months prior to the filing of the petition in bankruptcy.

The Supreme Court of Nebraska based its decision upon Section 67 *f* which reads as follows:

> "That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment or other lien shall be deemed wholly discharged and released from the same, *and shall pass to the trustee as a part of the estate of the bankrupt*, unless the court shall, on due notice order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid."

The very terms of this section make it clear that it has no application to exempt property for it is expressly provided that the property affected by such liens shall pass to the trustee as a part of the estate of the bankrupt unless the court orders that the liens shall be preserved for the benefit of the state and thereupon the same shall pass to and shall be preserved by the trustee for the benefit of the estate. As the other sections of the act provide that the exempt property shall be no part of the trust es-

tate and that the trustee shall have nothing to do therewith, it is clear that the property referred to in Section 67 *f* is only the property which becomes a part of the bankrupt estate.

A reading and analysis of the whole act leads irresistibly to the conclusion that Sections 60, 67 and 70 were enacted to fix the rights of the trustee, as the representative of the creditors, against particular creditors or claimants to that part of the bankrupt's property which passes to the trustee and is distributed to the creditors, and when these sections are read in connection with the exceptions embodied in the act which provide that title to exempt property shall not pass to the trustee and that it is not administered by the bankruptcy court, there is no logical or reasonable ground upon which these remedial sections can be held to apply to property which is not a part of the estate and in which the trustee as a representative of the creditors has no interest. We submit that these principles have been satisfied beyond controversy by the decisions of this court.

In *Lockwood vs. Exchange Bank*, 190 U. S. 294, a creditor sought to enforce a lien on exempt property in the bankruptcy court. After analyzing the act this court said (190 U. S. 298):

> "Under the bankruptcy act of 1867 it was held that property generally exempted by the state law from the claim of creditors was not part of the assets of the bankrupt and did not pass to the assignee, but that such property must be pursued by those having special claims against it in the proper state tribunals. Thus, speaking of the act of 1867, Mr. Justice Bradley (in re Bass, 3 Woods, 382, 384) said:
>
> "Not only is all property exempted by state laws, as those laws stood in 1871, expressly exempted from the operation of the conveyance to the assignee, but it

is added in the section referred to, as if ex industria, that 'these exceptions shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignee, and in no case shall the property hereby excepted pass to the assignee or the title of the bankrupt thereto be impaired or affected by any of the provisions of this title.'

"In other words, it is made as clear as anything can be, that such exempted property constitutes no part of the assets in bankruptcy. The agreement of the bankrupt in any particular case to waive the right to the exemption makes no difference. He may owe other debts in regard to which no such agreement has been made. But whether so or not, it is not for the bankrupt court to inquire. The exemption is created by the state law, and the assignee acquires no title to the exempt property. If the creditor has a claim against it he must prosecute that claim in a court which has jurisdiction over the property, which the bankrupt court has not."

"We think that the terms of the bankruptcy act of 1898, above set out, as clearly evidence the intention of Congress that the title to the property of a bankrupt generally exempted by the laws of the state should remain in the bankrupt and not pass to his representatives in bankruptcy, as did the provisions of the act of 1867, considered In re Bass. The fact that the act of 1898 confers upon the court of bankruptcy authority to control exempt property in order to set it aside, and thus exclude it from the assets of the bankrupt estate to be administered, affords no just ground for holding that the court of bankruptcy must administer and distribute, as included in the assets of the estate, the very property which the act in unambiguous language declares shall not pass from the bankrupt or become a part of the bankruptcy assets. The two provisions of the statute must be construed together and both be given effect. Moreover, the want of power in the court of bankruptcy to administer exempt property is besides shown by the context of the act, since throughout its text exempt property is contrasted with property not exempt, the latter alone constituting assets of the bank-

rupt estate subject to administration. The act of 1898, instead of manifesting the purpose of Congress to adopt a different rule from that which was applied, as we have seen with reference to the act of 1867, on the contrary exhibits the intention to perpetuate the rule, since the provision of the statute to which we have referred in reason is constant only with that hypothesis.

"Though it be conceded that some inconvenience may arise from the construction which the text of the statute requires, the fact of such inconvenience would not justify us in disregarding both its letter and spirit. Besides, if mere arguments of inconvenience were to have weight, the fact cannot be overlooked that the contrary construction would produce a greater inconvenience. The difference, however, between the two is this, that in the latter case—that is, causing the exempt property to form a part of the bankruptcy assets—the inconvenience would be irremediable, since it would compel the administration of the exempt property as part of the estate in bankruptcy, whilst in the other, the rights of creditors having no lien, as in the case at bar, but having a remedy under the state law against the exempt property, may be protected by the court of bankruptcy, since, certainly, there would exist in favor of a creditor holding a waiver note, like that possessed by the petitioning creditor in the case at bar, an equity entitling him to a reasonable postponement of the discharge of the bankrupt, in order to allow the institution in the state court of such proceedings as might be necessary to make effective the rights possessed by the creditor."

In *Ingram v. Wilson*, 125 Fed. 913, Judge Thayer, writing the opinion of the U. S. Circuit Court of Appeals of the 8th Circuit, said, on page 916:

"A creditor like Wilson, who has the right, under certain conditions, to subject the homestead to the payment of his debt, must seek such relief as he is entitled to under local laws in the courts of the state; and if a discharge of the bankrupt from all his debts when granted by the bankrupt court, will stand in the

way of his obtaining relief, that court, after administering upon all the assets subject to its control, may withhold the bankrupt's discharge until a reasonable time has elapsed to enable Wilson to assert his rights in the proper form. The order of date, December 18, 1902, directing the sale of the bankrupt's homestead and the application of the proceeds in the manner heretofore stated, is hereby vacated and annulled, and it will be so certified to the bankrupt court."

The rule laid down in the Lockwood case has been followed in many decisions by the Circuit Courts of Appeal and the Courts of last resort of the several states. The following are in point:

In re Orear 189 Fed. 888. (8 Cir.)
Huntington vs. Baskerville 192 Fed. 813 (8 Cir.)
In re Cale 191 Fed. 31 (8 Cir.)
In re Nat. Grocer Co. 181 Fed. 33 (6 Cir.)
Bank vs. Pindel 193 Fed. 917 (9 Cir.)
In re Nye 133 Fed. 33 (8 Cir.)
Ingram vs. Wilson 125 Fed. 913 (8 Cir.)
Hunergardt vs. Brittain 116 Fed. 31 (8 Cir.)
Steel vs. Buell 104 Fed. 969. (8 Cir.)
Woodruff vs. Cheeves 105 Fed. 601 (5 Cir.)
Roden vs. Bacon 132 Fed. 515 (5 Cir.)
Powers vs. Nelson 10 Nor. Dak. 580, 88 Nor. Western 703.
Gregory vs. Cale 115 Minn. 508; 133 N. W. 75.

The Supreme Court of Nebraska has cited *Cavanaugh vs. Fenley*, 94 Minn. 505, 103 N. W. 711 as sustaining the position that the adjudication in bankruptcy destroyed the garnishing creditor's liens upon the wage fund. An examination of that case shows that the property involved was not exempt but was a part of the bankrupt estate; and so far as the Cavanaugh case is authority here it is really in our favor because it does show that a garnishing creditor obtains a lien on the fund in the garnishee's hands. The case of *Gregory vs. Cale* 115, Minn. 508, is directly in

point, the court passing squarely upon the issue here presented and holding that a judgment lien upon exempt property, though obtained within four months of the adjudication, is not affected thereby. Thus the authority of the Minnesota Supreme Court is directly contrary to that of Nebraska.

The Nebraska Supreme Court dismissed the Lockwood case from consideration by saying that in that case the lien was founded upon a contract, but clearly this is not the logical ground of distinction. The bankruptcy act makes no distinction between liens which are founded upon contract and those which are obtained by judicial proceedings. *The real ground of distinction is whether the lien in question affects exempt property, which is not a part of the bankrupt estate, or non-exempt property which becomes a part of the trust estate.* We respectfully insist that the Lockwood case is decisive of the issue here involved. The principle being established by that case as well as the plain terms of the Bankruptcy Act itself that the exempt property is no part of the trust estate, it necessarily follows that section 67*f* and the other remedial provisions of the act annulling liens have no application to liens on exempt property, and the rights of creditors having liens on such property are not affected by the adjudication but they are left to enforce their liens as if no bankruptcy proceedings had intervened.

The bankruptcy court expressly declined jurisdiction over this controversy in denying Hall's petition for an order requiring the Railroad Company to pay the money into court. We have, therefore, an adjudication of the precise question in this very case. (Printed record, pages 67 to 72.)

III.

THE ADJUDICATION IN BANKRUPTCY DID NOT ANNUL OR PREVENT THE ENFORCEMENT OF THE IOWA JUDGMENTS AGAINST THE RAILROAD COMPANY IN THE GARNISHMENT SUITS. THOSE JUDGMENTS ARE IN FULL FORCE AND EFFECT. AND THE DECISION BELOW DENIES THEM FULL FAITH AND CREDIT UNDER THE CONSTITUTION.

Locke, Torrey and Rawls obtained personal judgments against the Railroad Company in the several garnishment proceedings; these judgments can be enforced by execution directly against the property of this plaintiff in error.

Hall has never instituted any proceeding directly attacking any of those judgments or seeking to set them aside in the courts in which they were rendered, nor any proceeding to enjoin the plaintiffs therein from enforcing their judgments. These judgments stand upon the records of the Iowa court in full force and effect. Hall has always contended and the Nebraska Supreme Court held that the adjudication in bankruptcy by the United States District Court for the District of Nebraska had the effect in and of itself of absolutely annulling and setting aside the judgments of the Iowa courts without any proceedings whatever being taken in reference thereto. We have not here the question of what Hall might have done in a direct proceeding attacking the Iowa judgments, nor even the question of what affect the bankruptcy act would have had if the property reached by the Iowa judgments had been non-exempt. We have simply the question of whether a bankruptcy adjudication in and of itself has the effect of cancelling and wiping out all judicial pro-

ceedings and the judgments therein rendered no matter in what court they may be pending or what property they may affect.

The Supreme Court of Nebraska held that the personal judgments against the Railroad Company in the garnishment proceedings were canceled and annulled by Hall's adjudication in bankruptcy, but the learned court does not explain what is to prevent the creditor plaintiffs in said judgments from enforcing them against the Railroad Company, but contents itself with saying that it thinks

> "that it is not at all likely that either the courts or the judgment creditors will make any attempt to enforce their payment."

This holding is so utterly inconsistent with all the fundamental principles of the conclusiveness of judgments and their invulnerability to collateral attack that we respectfully submit that the decision is wholly at variance with all authority.

The decisions of this court hold decisively to the contrary even where the property is not exempt and becomes a part of the trust estate and the rights of the claimant have accrued within four months prior to the adjudication. The bankruptcy court is without power to determine by summary proceedings a controversy between a trustee and a claimant of property of the bankrupt estate where the adverse claim has any substantial basis, but in all such cases a plenary suit must be resorted to. Another well settled principle is that where litigation affecting property is pending in State courts at the time of the adjudication, it is the duty and right of the State Court to proceed to judgment as between the parties before it until by some proper pleadings in the case it is informed of any

new rights which may have arisen by reason of the bankruptcy proceedings; the State court is not required to even take judicial notice of the bankruptcy proceeding. It is not questioned but that Hall's discharge operated to relieve him from all personal liability on the Locke, Torrey and Rawls judgments, but his discharge was a defense personal to him and even if any of the three judgment creditors should attempt to proceed against his property it would be necessary for him to plead his discharge and take the necessary legal steps to prevent the enforcement of the judgment. But here the question is as to the enforcement of the creditor's judgments against the railroad company.

In *Eyster vs. Gaff* 91 U. S. 521 this court determined these questions once and for all in an opinion by Mr. Justice Miller, who said on page 524:

> "It is a mistake to suppose that the Bankrupt Law avoids of its own force all judicial proceedings in the State or other courts the instant one of the parties is adjudged a bankrupt. There is nothing in the act which sanctions such a proposition.
>
> "The court in the case before us had acquired jurisdiction of the parties and of the subject-matter of the suit. It was competent to administer full justice, and was proceeding, according to the law which governed such a suit, to do so. It could not take judicial notice of the proceedings in bankruptcy in another court, however seriously they might have affected the rights of parties to the suit already pending.
>
> "It was the duty of that court to proceed to a decree as between the parties before it, until by some proper pleadings in the case it was informed of the changed relations of any of those parties to the subject-matter of the suit. Having such jurisdiction, and performing its duty as the case stood in that court, we are at a loss to see how its decree can be treated as void. It is almost certain, that if at any stage of the proceeding, before sale or final confirmation, the assignee had intervened, he would have been heard to

assert any right he had or set up any defence to the suit. The mere filing in the court of a certificate of his appointment as assignee, with no plea or motion to be made a party or to take a part in the case deserved no attention, and received none. In the absence of any appearance by the assignee, the validity of the decree can only be impeached on the principle that the adjudication of bankruptcy divested the other court of all jurisdiction whatever in the foreclosure suit. The opinion seems to have been quite prevalent in many quarters at one time, that, the moment a man is declared bankrupt, the District Court which has so adjudged draws to itself by that act not only all control of the bankrupt's property and credits, but that no one can litigate with the assignee contested rights in any other court, except in so far as the circuit courts have concurrent jurisdiction, and that other courts can proceed no further in suits of which they had at that time full cognizance; and it was a prevalent practice to bring any person who contested with the assignee any matter growing out of disputed rights of property or of contracts, into the bankrupt court by the service of a rule to show cause, and to dispose of their rights in a summary way. This court has steadily set its face against this view.

"The debtor of a bankrupt or the man who contests the right to real or personal property with him, loses none of those rights by the bankruptcy of his adversary.

"The same courts remain open to him in such contests, and the statute has not divested those courts of jurisdiction in such actions. If it has for certain classes of actions conferred a jurisdiction for the benefit of the assignee in the circuit and district courts of the United States, it is concurrent with and does not divest that of the State courts."

Dimmick vs. Copper Co., 117 U. S. 559, involved the question of the duty of a bankrupt to appear in the state court in which he was sued and plead his discharge. The decision of the court turned upon that question alone and following Eyster vs. Gaff it was expressly held that the

state court was not ousted of jurisdiction of a suit begun before bankruptcy proceedings were instituted, but that it retained the power to proceed to judgment. The court said, at the bottom of page 565:

> "It is said, however, that, though the defendant had his discharge before the judgment in the State court was rendered, and might have successfully pleaded it in bar of that action and did not do so, the judgment now sued on is the same debt, and was one of the debts from which, by the terms of the bankrupt law, he was discharged under the order of the bankruptcy court, and to any attempt to enforce that judgment the discharge may be shown as a valid defence. That is to say, that the failure of the defendant to plead it when it was properly pleadable, when, if he even intended to rely on it as a defence, he was bound to set it up, works him no prejudice, because, though he has a dozen judgments rendered against him for this debt after he has received his discharge, he may at any time set it up as a defence when these judgments are sought to be enforced. Upon the same principle, if he had appeared in the State court and pleaded his discharge in bar, and it had been over-ruled as a sufficient bar, he could, nevertheless, in this action on that judgment, renew the defence.
>
> "But, in such case, his remedy would not lie in renewing the struggle in a new suit on such judgment, but in bringing the first judgment for review before this court where his right under the discharge would have been enforced then, as he seeks to do it now, after submitting to that judgment without resistance and without complaint.
>
> "We are of opinion that, having in his hands a good defence at the time that judgment was rendered against him, namely, the order of discharge, and having failed to present it to a court which had jurisdiction of his case, and of all the defences which he might have made including this, the judgment is a valid judgment, and that the defence cannot be set up here in an action on that judgment. The case of *Steward*

v. Green, 11 Paige 535, seems directly in point. So, also, are *Hollister v. Abbott*, 11 Foster, 31 N. H. 442, and *Bradford v. Rice*, 102 Mass. 472.

"It is clear that until the judgment of the Massachusetts court is set aside or annulled by some direct proceeding in that court, its effect cannot be defeated as a cause of action, when sued in another State, by pleading the discharge as a bar which might have been pleaded in the original action.

"The judgment of the New York court is affirmed."

This court has expressly held that the rules announced in the *Eyster* and *Dimmock* cases are in full force and effect under the bankruptcy act of 1898.

Jacquith vs. Rowley, 188 U. S. 620.
Bardes vs. Bank, 178 U. S. 524, 537.

This principle has also been recognized in many other decisions of this court in passing upon collateral questions and has been applied by the Circuit Courts of Appeal and the Courts of last resort of the several states in many cases.

Scott vs. Ellery, 142 U. S. 381-384.
Doe vs. Childress, 21 Wall. 643.
Jerome vs. McCarter, 94 U. S. 737.
Davis vs. Friedlander, 104 U. S. 570.
Jacquith vs. Rowley, 188 U. S. 620-626.
Brackett vs. Dayton, 25 N. W. 348-34 Minn. 219
Bank vs. Elliott, 85 N. W. 417. 109 Wis. 648.
Mauran vs. Crown Co., 50 Atl. 387. 23 R. I. 344
Francisco's adm. vs. Shelton, 8 S. E. 789. 85 Va. 779.
State ex rel vs. Sup. Ct., 68 Pac. 170, 28 Wash. 35.
Rosenthal vs. Nore, 56 N. E. 884, 175 Mass. 559.
Pickens vs. Dent, 106 Fed. 653 (4 Cir.) 45 CCA 522.

Davis vs. Wakelee 156 U. S. 680, 689.
Boynton vs. Ball, 121 U. S. 457.
Acme vs. Beekman, 222 U. S. 300.
Johnson vs. Spencer, 195 Fed. 215 (8 Cir.)
Bank vs. Hopkins, 199 Fed. 873 (5 Cir.)
Bank vs. Title Co. 198 U. S. 280.
In re Rathman, 183 Fed. 913 (8 Cir.)
Babbit vs. Dutcher, 216 U. S. 102.
Gregory vs. Cale, 115 Minn. 508; 133 N. W. 75.
Powers vs. Nelson, 10 N. Dak., 580; 28 N. W. 703.
Metcalf vs. Barker, 187 U. S. 165.
Pickens vs. Roy, 187 U. S. 177.
Jones vs. Springer, 226 U. S. 148.

It having been demonstrated from the authorities that exempt property forms no part of the bankrupt estate and that section 67*f* has no application thereto and that the adjudication in bankruptcy did not by its own force have any effect upon the Iowa judgments, it necessarily follows that the garnishing creditors were free to pursue their remedies to judgment in the State Courts, unaffected by the bankruptcy proceedings, and that the judgments against the railroad company are still in full force and effect.

These judgments, therefore, constituted a good defense to the suit of Hall in the Nebraska courts and the decision of the State Supreme Court in holding otherwise denies to the Iowa judgments that full faith and credit to which they are entitled under section 1, of Article IV of the Constitution.

C. R. I. & P. vs. Sturm, 174 U. S. 710.
Harris vs. Balk, 198 U. S. 215.
L. & N. vs. Deer, 200 U. S. 176.
Moore vs. C. R. I. & P., 43 Iowa 385.

C. B. & Q. vs. Moore, 31 Neb. 629.
Hadachek vs. C. B. & Q., 74 Neb. 385.

The judgment below should be reversed.

Respectfully Sumbitted,

RYRON CLARK,
of Counsel.

ARTHUR R. WELLS,
Attorney for Plaintiff in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR

Supreme Court of the United States

October Term, 1912

No. 249

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

PLAINTIFF IN ERROR,

vs.

WILLIAM H. HALL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA

On page 14 of the brief of ~~plaintiff~~ defendant in error, the decision of this court in the case of *First National Bank of Baltimore v. Staake*, 202 U. S. 148, is quoted as authority for the contention that Section 67f of the Bankruptcy Act applies to exempt property and has the effect of annulling liens thereon or rights of creditors thereto. An examination of the opinion shows that this question was not presented or decided. The property involved in the *Staake* case was non-exempt, and the trustee would have had the right to take possession of it and convert it into money and distribute it to the general creditors of the

estate, but for the fact that a valid conveyance thereof had been made by the bankrupt which was good against the trustee of the bankrupt estate. It appeared, however, that certain creditors had acquired an attachment lien on this property which was superior to the rights of the grantee in the conveyance. The bankruptcy court, acting under the second proviso of Section 67f, ordered that the lien of the attaching creditors should be preserved for the benefit of the estate, and their rights thereunder passed to and were enforced by the trustee for the benefit of the estate.

Clearly, therefore, this case involved not a question of the rights of the bankrupt, on the one hand, as against some or all of the creditors on the other hand, to the property, but the question of the rights of some creditors claiming under the conveyance and some claiming under the attachment on the one hand, as against the trustee, as the representative of the estate, on the other hand. The mere reading of Section 67f shows that it was enacted especially to meet just this situation, and its enforcement operated to protect the rights of the trustee to the property of the bankrupt, which was not exempt and which was liable for the payment of his debts. Section 67f, by its terms, has to do solely with the enforcement of the rights of the trustee as the representative of the general creditors to the property of the bankrupt, which is liable for his debts.

In the case at bar, the property involved is exempt, and the trustee has no interest therein whatever. The

defendant in error could not in any event claim any relief under this section because by its terms the property affected by it, and upon which the liens are annulled, passes to the trustee, or if the liens are preserved by order of the bankrupt court, they are enforced for the benefit of the trust estate. Thus the bankrupt could not have any relief under this section. Its enforcement operates only to take the proceeds of the property or of the liens thereon from some of the creditors and distribute it equally among all.

Clearly, therefore, the decision in the *Staake* case is not authority for the contention of counsel that Section 67f has the effect of annulling the liens of attaching creditors on the exempt property. If it were designed to have such an effect, it could be invoked only by the trustee. Certainly the *Staake* case is not authority for the contention that the adjudication in bankruptcy had the effect in and of itself of annulling and setting aside the judgments of the Iowa court. The quotation from the opinion on page 14 of the brief of the defendant in error is misleading in the setting in which it is presented, but a reading of the statute and the opinion will expose the fallacy of the argument.

The Railroad Company has not brought this case to this court for review because it wants to escape the payment of wages to its employe, but only because it wants to avoid paying twice. Even this motive would not bring it here on account of this case alone, but with its lines extending into many states, the plaintiff in error is confronted several times every year with just the

situation that arose in this case, and it is to obtain a final decision on the point involved that the writ of error has been brought to this court.

We, therefore, respectfully submit that the judgment of the Supreme Court of Nebraska should be reversed.

ARTHUR R. WELLS,
Attorney for Plaintiff in Error.

BYRON CLARK,
Of Counsel.

Supreme Court of the United States

October Term, 1912

No. 249

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. HALL, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA

BRIEF OF DEFENDANT IN ERROR

STATEMENT OF THE CASE

The facts in this controversy were all admitted by stipulation of parties herein which appears at page 15 of printed record. It therein is shown that at the time of the attachment proceedings wherein plaintiff in error was garnished,

defendant in error, was insolvent, was the head of a family and a resident of the state of Nebraska, and had been all such for more than six months prior to the adjudication of himself a bankrupt, on August 7, 1907, as therein stated.

It further appears therein that defendant in error, Hall, had no lands, town lots nor houses subject to exemption as a homestead, and that all moneys sought to be garnished in the hands of plaintiff in error, was exempt to him under the laws of the state of Nebraska.

That section of the Nebraska statute declaring Hall to be entitled to these moneys as exempt is found in Cobbey's Annotated Statutes (1907), Section 1522, which reads as follows:

> "All heads of families who have neither lands, town lots or houses, subject to exemption as a homestead under the laws of this state shall have exempt from forced sale on execution the sum of $500 in personal property."

These moneys were also exempt to defendant in error, Hall, by force of Section 1529, Cobbey's Annotated Statutes (1905), which reads as follows:

> "The wages of laborers, mechanics and clerks who are heads of families, in the hands of those by whom such laborers, mechanics, or clerks may be employed, both before and after such wages shall be due, shall be exempt from the operation of attachment, execution and garnishee process; providing that no more than 60 days' wages shall be exempt."

The court will note that the last section above quoted was amended by the Nebraska Legislature in its session of 1907,

which amendment would go into force as of the date of August 1, 1907, and that therefore the above statute as in existence in 1905 was the law at the time of the garnishment proceedings above complained of.

That these moneys belonging to the defendant in error, Hall, were not exempt in 1907 in the state of Iowa wherein these attachment proceedings were had, is shown by Section 4013 of the Iowa code providing (p. 27 record):

> "There shall be exempt to an unmarried person not head of a family and to non-residents their own ordinary wearing apparel and trunk necessary to contain the same."

It therefore appears that at the time the attachment proceedings were had in the state of Iowa wherein the moneys in the hands of the plaintiff in error herein were garnished that said moneys in the state of Nebraska were exempt to the said defendant in error, William H. Hall, and that in the state of Iowa they were not exempt to said Hall. That the said attachments were sustained and that the said orders of garnishment against the plaintiff in error were entered in the various Iowa courts because said moneys were not exempt to the debtor in said actions but were subject to execution in said state of Iowa. It also further clearly appears that each and all of these creditors of the defendant in error, Hall, were simple contract creditors and that none of them had any lien or claim against the said Hall for payment of the obligation which he owed them other than a simple contract claim, such as any and all the other creditors of the said defendant in error, Hall, would have under like conditions and circumstances.

Before then entering upon the argument of this case we desire the court herein to carefully distinguish this controversy from any and all such cases where the attaching creditor was attempting to seize exempt property. Not one of the plaintiffs in any of these attachment cases claimed any right to proceed against the exempt property of the defendant in error, Hall.

Nor did they seize the exempt property of the defendant in error, Hall, when the orders of garnishment were entered they were entered because the property in the hands of the plaintiff in error in the Iowa court was not exempt to the defendant in error, Hall, and under the laws of Iowa they had the right to subject it to the payment of their indebtedness and therefore only ran against the non-exempt property of their debtor, Hall.

Exempt property in the state of Iowa is as sacred from attachment and garnishment as is exempt property in the state of Nebraska.

This is shown by Section 4018 of the Iowa Statutes (p. 33 record), which provides for a fine of not less than $10 nor more than $50 to be imposed upon anyone who would send a claim against a resident of the state of Iowa, out of the state for collection, with intent to deprive a resident in good faith of the state of the benefit of the exemption laws thereof, for the purpose of bringing action thereon, when such action might have been maintained in the Iowa courts but for the exemption laws of said state.

Nor is this a case where the attachment lien was created more than four months prior to the adjudication in bank-

ruptcy. Such proceedings would not be affected by the bankruptcy proceedings as its laws expressly provide.

It will be seen then that the issue herein in its beginning was a conflict between the laws of the state of Iowa and the laws of the state of Nebraska, as to the exemptions which the debtor William H. Hall was entitled to at the time of the maintenance of said proceedings. Under the Iowa statute the moneys herein sought to be appropriated by the attaching creditors was not exempt to their debtor and their attachment proceedings were maintained because said moneys were held by said court not to be exempt.

ARGUMENT

I

If these attachment proceedings were only on the non-exempt property of the defendant in error and were maintained and allowed because said property attached, to-wit: the moneys garnished in the hands of the plaintiff in error, were not exempt to defendant but were subject to the payment of the claims of the attaching creditors, these creditors cannot now be heard to urge the contention that, having attached and seized these moneys as not exempt to their debtor, they should be allowed to continue to hold them by the bankrupt court because they were exempt to him. And if these attaching creditors cannot urge such contention of exemption, plaintiff in error cannot do so, for it has no greater rights than they.

It is urged by plaintiff in error in its brief that by these attachment proceedings these creditors obtain specific liens against the funds which they had garnished in its hands. But we answer that such liens were only against the said funds as the non-exempt property of their debtor. Nowhere and at no time did the Iowa court authorize or empower any of its officers to seize any other than the non-exempt property of defendant in error and it was never at any time held in any

other relation or right than non-exempt, and whatever lien arose from such attachment proceedings could only have been a lien on property which was not exempt to the attachment debtor. None of these creditors claimed any right by contract with their debtor to seize his exempt property. And they, at no place in the course of the attachment suits, evidenced any intent or purpose to do so.

This situation was the only one in existence when on August 7, 1907, the bankrupt court in and for the district of Nebraska on a petition filed but a few days prior thereto adjudicated the said William H. Hall a bankrupt. Hall had never appeared in the Iowa courts with any defense whatever to any of these attachment suits. Consequently no question of exemption had ever been raised therein. Had it been raised by him there is no question but what the court would have decided that all moneys in hands of plaintiff in error were not exempt but fully subject to the process of attachment, the same as any other property of a debtor could be. This is the holding of all the cases cited in sub-division I of plaintiff's brief filed herein, some of which appear in the printed record. It was useless for him to request the court to consider any such question of exemption. Therefore it was not raised and no suggestion appears in any of these various attachment suits at the time of the adjudication of bankrupt that any of this money sought to be held by the court was exempt to the debtor Hall, and had it been suggested to the court in the face of the decisions cited by plaintiff in error, this court can readily see that any and all right of exemption would have been denied. And the issuance of the attachment suits in each one of these several cases by the court was a determination by the court in the seizing of the funds in the hands of the plaintiff in error by garnishment

that such funds were subject to the payment of the claims of the creditors in said attachment suits and were not exempt to the debtor Hall, therein. And to argue herein, that such attachment suits obtain a lien upon said funds as exempt moneys to the defendant in error, Hall, herein, is to contradict the adjudication of the court in those cases.

II

It plainly appears, therefore, that the force and effect of the adjudication of the bankrupt court on August 7, 1907, that defendant in error, Hall, herein was a bankrupt brought in full force and effect in each one of those attachment suits, the provisions of 67c and 67f of the bankrupt law which completely nullified and avoided ip so facto any and all liens that may have been caused thereby in these various attachment proceedings in the Iowa courts wherein the funds in the hands of the plaintiff in error were sought to be held by garnishment.

Section 67c of the bankrupt law reads as follows:

"A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference. * * * Or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened."

Section 67f as far as material here, reads as follows:

"That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same."

At page 10 of plaintiff in error's brief, it is said:

"The purpose of the BANKRUPT ACT is to secure equal distribution among the bankrupt's creditors of his property which is liable for his debts. The bankrupt is allowed to retain the property which under the laws of the state in which he lives is exempt to him and the bankruptcy court takes possession of the exempt property if at all only to segregate it from the trust estate and set it off to the bankrupt."

In re McKenzie, 142 Fed. 383, the courts say:

"It was the intention of congress and the public policy embodied in the bankrupt law to divide the estate of the bankrupt between him, his wife and children on the one hand, and his creditors on the other hand, as the laws of the state of his domicile authorize its division under like circumstances."

The point for determination in the case at bar was directly involved in the case of In re Beals, 116 Fed. 530, wherein the court upheld the contention of defendant in error herein, in these words:

"An adjudication in bankruptcy whether voluntary or involuntary proceedings, renders void a judgment against

a garnishee rendered in an action brought against the bankrupt within four months prior to the filing of the petition and when he was insolvent, and discharges the garnishee from liability thereon, and such judgment must thereafter be treated as a nullity wherever drawn in question whether directly or collaterally."

This holding of the court is also upheld in the kindred case of Cavanaugh vs. Fenley, 94 Minn. 505, 103 N. W. 711, where the court said:

"A garnishment of funds belonging to an insolvent person within four months of the time he is adjudged a bankrupt is within the meaning of the bankruptcy act dissolved and rendered null and void by the bankruptcy proceedings, and this result follows, notwithstanding, the insolvent person made no reference in his schedule of assets to the fact that the indebtedness had been garnished."

The supreme court of the state of Kentucky has passed upon this question in the case of Thompson vs. Ragan, 117 Ky. 577, and is directly in point here:

"Where a debtor was adjudged a bankrupt within four months after the levy of an attachment whereupon his trustee moved to vacate the attachment on the ground that its enforcement would create a preference and that it was obtained while the debtor was insolvent, it was no defense that the property seized was exempt from execution in the state of the bankrupt's residence and that his entire property including that levied on was less than his statutory exemption in such state so that no part thereof could be paid to creditors, such question being for the determination of the federal court."

This argument raised by plaintiff in error in its brief, that this property being exempt would not be affected by the

provisions of the bankrupt act above cited, is also well answered in the case of In re Stevens, 2 Bissell 373, the language of the court being:

> "The ground of this motion is that by the laws of the state of Illinois the property was not exempt and that by the attachments the creditors acquired a valid lien upon it as against the bankrupt; and further, that as under the bankrupt act, it would be exempt and would not pass to the assignee, the bankrupt was the only party who could contest the right to the property under the attachment. That the assignee had no right to take possession of it under the act nor had the other creditors any right or interest in the question, for if released from the attachment it would be exempt under the bankrupt act, and if held, it would be taking a property they could not in any way reach. This is an ingenious view of the question, but I think untenable. I think it is as much the duty of the court to protect the rights of the bankrupt as the creditor. If by the act he is entitled to certain exempt property, it is the duty of the court to see that he has it. When a bankrupt surrenders all his property to his creditors except certain portions which the act exempts for his own use and the use and convenience of his family, it is the duty of the court to see that the portion he is entitled to is secured to him as much as it is to see that the portion he is required to surrender to his creditors is surrendered to them."

While this case was under the old bankrupt law, yet in principle it is identical with the case at bar.

In re Tune, 115 Fed. 906, is a strong case on the proposition now before this court, and we trust that the opinion of the court therein may be read by this court. In arriving at a decision on the point herein involved, among other things, it is there said:

> "Whatever benefit results from the annullment of attachment liens extend to exempt property as well as to

that which is not exempt. It is the policy of the law to allow the bankrupt as well as the creditors to benefit by the changed statutes."

That this doctrine of the courts as laid down in this opinion in the case last cited, is not obsolete, I am pleased to cite the case of In re Forbes, 186 Fed. 79, wherein the circuit court of the 9th circuit held:

"That 67f" of the bankrupt act "was applicable to liens acquired through legal proceedings against the bankrupt within four months prior to the filing of the bankruptcy petition, without reference to whether the lien was acquired on exempt or non-exempt property, so that an attachment on property of the bankrupt subsequently exempted to him as a homestead was dissolved by bankruptcy proceedings, though the property did not pass to the trustee."

In re Ellis, Federal Cases No. 4400; First N. B. R. 555, it was said in a case where the property involved was held to be exempt to the bankrupt and did not pass to the assignee, that:

"Attachments in state courts brought within four months before commencement of proceedings in bankruptcy are dissolved."

Wood vs. Carr, 115 Ky. 303.
In re McCartney, 109 Fed. 621.
In re Griffin, Fed. Cases No. 5813.
Armour Packing Co. vs. Wynn, 119 Ga. 683.
Cook vs. Robinson, 194 Fed. 785.
In re Walsh Bros., 159 Fed. 560.
In re West Side Paper Co., 159 Fed. 241.
Wise Coal Co. vs. Zinc Co., 123 Mo. App. 249.
Hatfield vs. Moller, 4 Fed. 717.
In re Dougherty, 109 Fed. 480.

Alexander vs. Wilson, 144 Cal. 5.
Goodenough, et al., vs. Galloway, 84 Pac. 1053.
Clark vs. Larremore, 188 U. S. 486.
Smalley vs. Langenor, 196 U. S. 93.

It will thus be seen that this question is one which has been considered by these able courts and the provisions of the bankrupt act given full force and effect according to the wise purpose and intent which its humane and just provisions were intended to accomplish and we admit that it is this just and equitable object that makes a bankrupt law worthy and commendable.

But what a perversion of such noble aim in the operation of this worthy act would result if contention of plaintiff in error was here to prevail. Here are two creditors without any rights or claims differing from the other creditors of defendant in error commencing in only the usual and ordinary manner the attachment proceedings shown in the record asking payment from the non-exempt moneys of their debtor, Hall, in hands of the plaintiff in error. There is not a creditor of Hall's but what can ask the same right and under the law has it. Now it is admited that during all this time, Hall is insolvent and unable to pay all his creditors. Is counsel asking this court to further and maintain the just purposes of this bankrupt act, when it beseeches this court to allow these creditors to hold the unlawful preferences which they would thus gain in direct opposition to the plain provisions of this law? Does it need any further argument to show that counsel are wrong in asking that these creditors should get this money when all the remaining creditors get nothing? Would that be an equal distribution of the funds of the bankrupt liable for the payment of his debts? But the reply may be that these other creditors have no right of complaint be-

cause this money is not such a fund as they have recourse to, but is exempt to defendant in error. Then we answer, it is no fund that they have recourse to. They have not asked any recourse to moneys but what any other creditor might seek. They are not like the creditor in the Lockwood vs. Exchange Bank, 190 U. S. 294, nor like the creditor in Ingram vs. Wilson, 125 Fed. 913, cited by counsel, where each of said creditors showed a special contract right to follow exempt funds that other creditors might not reach. They have no superior claims of any nature whatever. They are just simple ordinary creditors.

It is also plain then that these Iowa creditors can never demand these moneys for the bankrupt court has said they are exempt and they have no claim to exempt money. It is true that heretofore this Iowa court has refused to recognize the exemption which Nebraska laws gave to Nebraska citizens. But when the federal law speaks and the federal court issues its decree it is as forceful in Iowa as in Nebraska or anywhere else in the United States and the Iowa court is bound to recognize it and give its mandate full effect. The jurisdiction of the federal law is not limited and the authority of the federal court does not rest in comity as regards the state of Iowa but is there the full force of positive law.

Again it was not until March 18, 1908, that the bankrupt court set off to defendant in error these moneys in hands of plaintiff in error (Rec. p. 18) as exempt. Then for the first time was there any judicial declaration of their exempt character. But the provisions of 67f of the bankrupt act nullified these attachment liens on August 7, 1907, when defendant in error was adjudicated a bankrupt. They were obtained by simple and ordinary creditors only when defendant in error

was insolvent within four months prior to said adjudication, and their nullification was in no manner or form suspended by virtue of an order setting apart the exemptions made by the referee in bankruptcy more than seven months thereafter.

In Sub-division II of brief of plaintiff in error much stress is put on the argument (p. 11) that because the title to this property does not vest in the trustee, that therefore Section 67f of the bankrupt act does not apply in this case. And many cases are cited as sustaining this contention. While we feel that none of these cases are in point on the contention involved in this controversy yet we can answer this argument in no better way than to cite this court to the case of First National Bank vs. Staake, 202 U. S. 148, wherein this court in answer to a similar argument in its opinion therein say:

> "The argument that 67f in question here refers only to liens upon property which if such liens were null would pass to the trustee of the bankrupt, we think is unsound since that contingency is amply provided for by the prior clause of the section annulling all such liens and providing that property affected thereby shall pass to the trustee as part of the estate. Under the argument of the attaching creditors in this case, the subsequent clause would be entirely unnecessary."

CONCLUSION

This is an error proceeding to the supreme court of the state of Nebraska. Two errors are complained of in the decision of that court in this case.

In answer to the first specification of error we respectively submit to the court that section 67f of the bankrupt act did nullify the attachment liens of the various creditors

in the Iowa courts against the defendant in error, wherein the funds in the hands of the plaintiff in error herein were garnished. And that that court did not err in upholding the legal force of said section of the bankrupt law.

And that said liens having been annulled were of no force nor affect and said moneys in the hands of plaintiff in error were wholly released and discharged therefrom by force and effect of said bankrupt law and there were no judgments in existence which were entitled to the recognition of the said supreme court of Nebraska, and that its judgment herein denying any legality to any of said attachment and garnishment proceedings was just and legal.

There is therefore no error in the proceedings of said court and we respectfully pray that this court affirm its decision herein.

Respectfully submitted, R. H. Breckenridge

J. O. DETWEILER,

Attorney for Defendant in Error.